707.

SUPREME COURT OF THE UNITED STATES.

No. 106.

ALEXANDER M. LAWRENCE ET AL., CLAIMANTS OF THE SHIP HORNET, APPELLANTS,

vs.

CHARLES MINTURN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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DISTRICT COURT OF THE UNITED STATES,
for the Northern District of California:

In Admiralty.

CHARLES MINTURN
vs.
SHIP HORNET.

To the Honorable Ogden Hoffman, Jr., Judge of the District Court of the United States for the Northern District of California.

Charles Minturn, of the city of San Francisco, in the State of California, exhibits this his libel in a cause of contract civil and maritime against the ship or vessel "Hornet," now lying at the port of San Francisco in the District aforesaid, and within the admiralty and maritime jurisdiction of this Honorable Court, whereof Lawrence is or lately was master; her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein.

And thereupon the said Charles Minturn doth articulately propound as follows:—

First. That on or about the 19th day of July, A. D. 1851, the said ship or vessel Hornet, whereof said Lawrence was master, being a general ship and common carrier, then in the port of New York, and designed on a voyage upon the high seas, and within the flux and reflux thereof, and within the admiralty and maritime jurisdiction of this Honorable Court, to wit: from said port of New York to the port of San Francisco aforesaid, the libellant being the owner of two boilers and two chimneys for ditto, eight pieces of sheet-iron work, three pieces of pipe, two hundred and four grate bars, sixteen grate bar bearers, eight boiler bearers, one bundle (four) bolts, two boxes of the value of $, made a contract with E. B. Sutton, the authorized agent at said New York of said ship and her owners, whereby he agreed, in consideration of certain freight, to convey the said goods and iron from the said port of New York to said San Francisco in said ship, which said contract is hereunto annexed (marked A) as part hereof; and also a contract with said Lawrence as such master, to convey said goods and iron, in consideration of said freight, from New York to San Francisco as aforesaid, and then to deliver the same in good order and condition to libellant, the damages of the seas, fire and collisions only excepted, and the libellant afterwards, to wit: on or about the 19th day of August, 1851, delivered to said master the said goods and iron, and received from him a Bill of Lading thereof, which is hereunto annexed as part hereof, marked exhibit "B."

Second. That said ship shortly afterwards departed on her said voyage, but the said Lawrence, master as aforesaid, not regarding his duty in that respect, nor his promise and undertaking to convey

and deliver said goods as aforesaid, did not convey and deliver the same (although no danger of the seas, fire or collision prevented him from so doing), but on the contrary thereof so negligently, unskilfully and carelessly conducted himself, with respect to said goods and iron, that by and through the mere carelessness, unskilfulness and misconduct of said master and his mariners and servants, the said goods were wholly lost to libellant, by reason whereof the libellant has sustained damages to the amount of sixty thousand ($60,000), for which he claims reparation in this suit.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this court.

Wherefore the libellant prays that process in due form of law may issue against the said ship Hornet, her boats, tackle, apparel, and furniture, and that this Honorable Court will pronounce for his aforesaid demand, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and as the Court is competent to give in the premises.

(Signed) CHARLES MINTURN,
Libellant.

J. P. HAVEN,
JOHN H. SAUNDERS,
Proctors.

On this 30th day of January, A. D. 1852, appeared personally Charles Minturn, the above named libellant, and was sworn to the truth of the foregoing libel, to the best of his knowledge and belief.

(Signed) HENRY B. JANES,
U. S. Commissioner.

Exhibit (B).

210. Shipped, in good order and well-conditioned, by Edward Minturn, on board the ship called the Hornet, whereof Lawrence is master, now lying in the port of New York, and bound for San Francisco, California—to say: two boilers, and two steam chimneys for ditto; eight pieces sheet-iron work; three pieces pipe; one band; two hundred and four grate-bars; sixteen grate-bar bearers; eight boiler-bearers; six manhole plates; eight boiler doors; one bundle (four) bolts; two boxes—the whole to be discharged as soon as convenient, and to be received at Cunningham's Wharf, in San Francisco, without other than the usual or ordinary charge for discharging per day—being marked and numbered as in the margin,

Freight . . $4,500 00
5 p. c. primage 225 00
$4,725 00

E. B. Sutton,
84 Wall St.
Dispatch Line,
California Packets.

Contents unknown.

Goods to be delivered at the vessel's tackles, when ready to be delivered. Not accountable for breakage, leakage, or rust. Freight payable before delivery, if required.

and are to be delivered in the like order and condition at the port of San Francisco (the dangers of the seas, fire and collision only excepted) unto Charles Minturn, or to his assigns, he or they paying freight for the said boilers, steam chimneys, and other iron work, forty-five hundred dollars, with five per cent. primage, and average accustomed.

In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in New York, the 19th day of August, 1851.

(Signed) WILLIAM W. LAWRENCE.

Exhibit (A).

Memorandum of agreement to ship on board the ship Hornet, by Edward Minturn, Esq., two boilers, two chimneys or steam-chests, smoke-pipes in sheets, and some grate-bars, in all about forty tons weight, from this port to San Francisco, California, for the sum of forty-five hundred dollars, with five per cent. primage;—the whole to go on deck, except the grate-bars and sheet-iron for smoke-pipe. It is understood that the shipper is to put them on the deck of the vessel at his expense, and the ship is to discharge them as soon as convenient, and they are to be received at Cunningham's Wharf in San Francisco, without other than the ordinary charge per day for discharging. It is farther understood that the said boilers are to be ready to go on board the vessel on the ninth day of August, or as soon thereafter as the ship may require them, giving shipper two days' notice thereof.

(Signed) EDWARD MINTURN.

E. B. SUTTON,
Agent for ship Hornet.

New York, 19th July, 1851.

I have compared the above with the original, and declare it to be a true copy.

(Signed) T. B. ROBERTSON.

New York, 9th Sept. 1851.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

[L. S.] The President of the United States of America, to the Marshal of the Northern District of California, greeting:—

Whereas, a libel has been filed in the District Court of the United States for the Northern District of California, on the 30th day of January, in the year of our Lord one thousand eight hundred and

fifty-two, by Charles Minturn against the ship Hornet, wherein he claims $60,000 damages for a breach of contract of affreightment, and for the reasons and causes in said libel mentioned, and praying the usual process and monition of said court in that behalf to be made, and that all persons interested in said ship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said ship may, for the reasons and causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are, therefore, hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody, until the further order of this court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Northern District of California on the 10th day of February, A. D. 1852, at 11 o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Ogden Hoffman, Jr., Judge of said Court, at the city of San Francisco, in the Northern District of California, this 30th day of January, in the year of our Lord one thousand eight hundred and fifty-two, and of our Independence the seventy-sixth.

JNO. A. MONROE,
Clerk.

J. H. SAUNDERS, *Proctor for Lib't.*

Endorsed, "Filed January 30, 1852.
"Received, January 30, 1852.

JNO. A. MONROE, *Clerk.*
D. F. DOUGLASS, *U. S. M.*
by N. DOUGLASS, *Deputy.*"

"In obedience to the within monition, I attached the ship Hornet therein described on the 30th day of January, A. D. 1852, at 4 o'clock P. M., and have given due notice to all persons claiming the same, that this court will, on the 10th day of February, inst., if that day shall be a day of jurisdiction, if not, on the next day of jurisdiction thereafter, proceed to the trial and condemnation thereof, should no claim be interposed for the same."

D. F. DOUGLASS, *U. S. Marshal,*
by G. BELL DOUGLASS, *Deputy.*

Dated Feb'y 10, 1852.

U. S. DISTRICT COURT
for the Northern District of California:

In Admiralty.

CHARLES MINTURN
vs.
THE SHIP "HORNET."

You will please enter my appearance as Proctor for claimants in the above cause.

Yours, &c.,
MATTHEW H. FURMAN,
Proctor, &c.

To JOHN A. MONROE, Esq., *Clerk, &c.*

San Francisco, February 3, 1852.

Endorsed, "Filed February 3, 1852.
JOHN A. MONROE,
Clerk."

UNITED STATES COURT
for the Northern District of the State of California:

In Admiralty.

CHARLES MINTURN
vs.
SHIP "HORNET."

To the Honorable Ogden Hoffman, Jr., Judge of the said District Court.

Charles Parsons, of the city of San Francisco, in the aforesaid State, consignee of the said ship, and agent of Alexander M. Lawrence, Shepherd Knapp, Elizabeth Stanter, Ross W. Wood, Alexander H. Grant, Jacob A. Westervelt (all severally of the city of New York, in the State of New York), William Chamberlain, and U. P. Tyler (severally of Red Hook, in Dutchess County, in the State of New York), owners of the said ship Hornet, her tackle, apparel, and furniture, intervening for their interest in the said ship Hornet, her tackle, apparel, and furniture, and states that they are the true and *bona fide* owners thereof, and that no other person is the owner thereof, and that he, the said Charles Parsons, is the consignee of the said ship Hornet, and the duly authorized agent of the several above named owners thereof, and that as such consignee and agent, he is duly authorized to intervene for the interests of the several owners aforesaid of the said ship Hornet. And therefore the said claimant prays that this Honorable Court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

Subscribed and sworn to, before me this 3d day of February 1852.

CHARLES PARSONS.

HENRY B. JANES,
U. S. Commissioner.
MATTHEW H. FURMAN, *Proctor.*
ELY & RANKIN, *Advocates.*

Endorsed, "Filed February 3, 1852."

(No. 5.) At a stated term of the District Court of the United States of America for the Northern District of California, held at the court-house in the city of San Francisco on Tuesday the 10th day of February, in the year of our Lord one thousand eight hundred and fifty-two:

Present, the Hon. Ogden Hoffman, Jr., District Judge.

CHARLES MINTURN
vs.
SHIP "HORNET."

The Marshal having returned upon the monition in this cause that he had attached the said ship, her tackle, &c., and had given due notice to all persons claiming the same, that this court would, on this day, proceed to trial and condemnation thereof, should no claim be interposed for the same: On motion of J. H. Saunders, Proctor for the libellants, proclamation was made for all persons having anything to say why the said ship Hornet should not be condemned and sold to answer the prayer of the libellant to appear. M. H. Furman appeared for claimants, and was allowed until Monday next to file claim and answer.

On like motion it was ordered that default of all others be taken.

Endorsed, "Filed February 10, 1852."

(No. 6.) U. S. DISTRICT COURT,
Northern District of California:

In Admiralty.

CHARLES MINTURN
vs.
THE SHIP "HORNET," her tackle, &c.
} Exception and answer.

To the Judge of the United States District Court for the N. Dist. of Cal.

Charles Parsons, of the city of San Francisco, in this District, intervening for the interest of Alexander M. Lawrence, Shepard Knapp, Elizabeth Stanley, Ross W. Wood, Alexander H. Grant, Jacob A. Westervelt, Wm. Chamberlain, and N. P. Tyler, owners of

the ship "Hornet" above named, presents the following exception to the libel filed herein, viz:—

That said libel is filed in the name of Charles Minturn, whereas respondent alleges on information and belief that the same has been instituted by or on behalf, and for the exclusive benefit of other parties not named herein, interested as assignees, or as insurers of the several articles mentioned in said libel whose names are unknown to respondent, wherefore respondent is not bound further to answer said libel, and prays that the same may be dismissed with costs.

And respondent, reserving to himself all further exceptions in law, both to form and substance as to said libel, and the proceedings of libellant in this action hereby answers said libel and alleges as follows:

First. That he has no knowledge sufficient to form a belief with respect to the allegations in the first article of said libel, that said libellant was the owner, as therein stated, of the articles therein enumerated, and leaves said libellant to his proofs thereof.

Second. That he fully, explicitly, and distinctly denies each separate allegation in the second article of said libel.

Third. And respondent further answering the several articles and allegations of said libel, alleges as follows, according to his best information and belief: That libellant or his agent was guilty of fraud, misrepresentation, and deceit in making the contract (therein mentioned) with E. B. Sutton, agent, and with Lawrence, master of said ship, and that by and through such fraud, misrepresentation, and deceit, said agent and said master were induced to enter into the agreement, and to sign the writings mentioned in said libel, that said fraud, misrepresentation, and deceit, related to the weight of the articles mentioned in said agreement, dated 18th July, 1851, drawn by or on behalf of libellant (a copy whereof is annexed to said libel), wherein said weight is stated to be about forty tons; whereas respondent alleges that the same exceeded fifty tons, and that libellant well knew the actual weight of said articles, and that he misrepresented the same in order to defraud said vessel and her owners of the freight justly due for the transportation of the same. And that said master and agent being unable to ascertain the correct weight of said articles, wholly relied upon the good faith of libellant in respect thereto, and received the same on board of said vessel.

And respondent further states, that said ship at the time said articles were put on board in the port of New York, was staunch, strong, and sea-worthy in every respect, and designed and built for the transportation of a full and heavy cargo from New York to San Francisco—that the cargo of said vessel was stowed with great skill and care, under the direction of a competent and experienced stevedore, and that the boilers and chimneys mentioned in said agreement were placed upon deck and firmly secured under the supervision, and to the satisfaction of the underwriters, and of the master builder of said ship—that extra shores and fastenings were placed beneath the same, to strengthen and support the deck, and that the

same were strongly lashed, secured, and fastened, and that barrels of provisions were placed around and between the same and the bulwark of said vessel, to give them additional support and security. And further, that said ship was duly examined and inspected by an insurance agent after said boilers and chimneys had been put on board and secured as above, and that said agent was in all respects well satisfied with the manner in which the same were placed and secured.

And respondent further alleges, that said ship sailed from the port of New York on Saturday, 23d August, 1851, and discharged her pilot between three and four o'clock on the afternoon of said day; that the weather continued fine and moderate during the succeeding three days, and that said ship during that period behaved well in all respects; that about 10 o'clock in the evening of Tuesday, 26th August, said vessel being then near the edge of the Gulf Stream in N. latitude 37°, West longitude 69°, or thereabouts, a storm arose which raged with great violence for about twenty-four hours, during which time the wind suddenly shifted from South Southwest, to North Northwest, and blew with increased force, thereby raising a heavy cross sea, and greatly endangering said ship, which was then lying to, so that said master was compelled to put said ship before the wind and run her;—that as said gale moderated the sea arose with great fury, and did not subside until Friday, the 29th August; that during said gale, and until the 29th August, said vessel labored very heavily, and rolled her gunwales under, and pitched violently, and did not rise with any degree of buoyancy, but settled so heavily that the sea rushed in and poured over her stern both when lying to and running before the wind—and that said vessel was rendered almost unmanageable by reason of the violence of the storm, and the heavy laboring and weight of said boilers and chimneys acted upon by the great force of the wind and sea; and was in danger of foundering—that the immense weight of said boilers and chimneys strained the decks and caused the seams to open, and that in consequence thereof, and of the laboring of the ship, said vessel began to leak to an alarming extent, so as to require extra pumps as well as the ordinary pumps to be worked without cessation—that she also shipped very heavy seas which broke the after carling of the top-gallant forecastle, and stove the carpenter's house, as well as both gangway boards, and deluged the deck—that the cabin and forecastle were flooded by the water pouring from above, as well as through the leaks caused by the openings of the seams and wood ends, and through the leaks about the rudder case—that said ship was in great danger, and that the lives of the officers and crew, as well as the safety of the ship and cargo, demanded that she should be lightened and relieved by throwing overboard said boilers and chimneys, and that the same would have been done during said gale, but that it was impossible, by reason of the violence of the wind and action of the sea, to launch the same without causing certain destruction to the vessel; that after said gale had subsided, it was found on examination that the decks had settled considerably under

the boilers aforesaid, and that the vessel continued to leak fast, to the great detriment of the cargo, and that she was in all respects strained and injured and partially disabled as well as leaky; that under these circumstances, said vessel being in a stormy latitude and the equinoctial storm being near at hand, said master deeming it necessary that said vessel should be lightened, summoned a council of the officers of said ship, on said 29th August, and that having determined, after due consultation, to throw overboard said boilers on the first opportunity, said master drew up a protest, a copy whereof is hereto annexed (marked "A"), which was then and there signed by himself, and the officers and several of the crew of said vessel; that thereupon the carpenter and crew of said vessel, under the direction of said master, proceeded to make due preparation to launch said boilers and chimneys whenever the wind and sea were sufficiently calm; that after great labor and much preparation, said chimneys were launched on the 6th September, and that said boilers, after a continuous labor of several days, were launched on the 11th and 12th days of September respectively; that said vessel was thereby greatly relieved, and that from that time the leakage gradually diminished, and the decks gradually, and in a great degree recovered their former shape and position—that on the 17th September following, the equinoctial storm began, and that a violent gale set in, with a tremendous sea, and raged with excessive fury until the 21st September, during which time said ship rolled and pitched very heavily, although greatly lightened and relieved, and sprung her foretopsail yard; so that respondent charges that if the said boilers and chimneys had still remained on board, said vessel being strained, injured, leaky, and partially disabled as aforesaid, would certainly have foundered, or that if she had lived through said storm, she would have leaked to such an extent as to damage the whole cargo, and would have been too much injured and disabled to continue her voyage or reach any port whatever.

And respondent further alleges, that the cargo of said vessel was actually damaged by said leakage, and said ship was very much strained and injured by the weight of said boiler and chimneys—and that said damage and injury resulted from the misrepresentations, fraud, and deceit of libellant, and that he is accountable therefor to the owners of said vessel in the sum of ten thousand dollars.

And respondent further states that all the articles mentioned in said libel and exhibits, except said boilers and chimneys, have been delivered, or are ready to be delivered to libellant on payment of freight and charges.

Fourth. That all and singular, the premises are true.

Wherefore, respondent prays, that this honorable court will be pleased to pronounce against the demand of the libellant, in his aforesaid libel mentioned and set forth, and to condemn the libellant in the amount of damages aforesaid, with costs, and otherwise right and justice to administer in the premises,

(Signed) CHARLES PARSONS.

Sworn to this 16th February, 1852, before me,
HENRY B. JANES,
U. S. Commissioner.

MATTHEW H. FURMAN, *Proctor.*
E. G. AUSTIN, & ELY & RANKIN, *Advocates.*

Copy Protest. A.

August 29, 1851. Lat. 31° 0′ N., Long. 61° 5′ W.

At sea, on board ship Hornet, of New York, William W. Lawrence master, bound from New York to San Francisco (Cal.).

We, the undersigned, master, officers and mariners of the ship Hornet, of New York, do after mature and serious deliberation enter this solemn protest: That, on the 26th day of August, 1851, the ship Hornet, being then in or about the long. of 49° W., lat. 37° N., experienced a gale of wind from South, veering to N. W., and that during said gale, which lasted until the night of the 27th of August, the weight of the deck-load, consisting of two boilers, with furnaces attached, and two steam chimneys (the whole supposed to be of the weight of forty tons or thereabouts), did cause the ship to labor very hard, rolling gunwale deep, shipping large bodies of water, straining the ship in her upper works and decks, causing the ship to leak badly, and her pumps constantly worked, placing our lives, ship and cargo, in imminent peril for their safety. We now, therefore, do most seriously and solemnly assert that, for the future preservation of the ship, and thereby our lives, and cargo, the said boilers, furnaces and chimneys are unsafe on the decks, and for the safety of the whole should be thrown overboard as soon as possible, the weather and sea permitting.

In testimony whereof to the above, we hereby subscribe our respective names.

WM. W. LAWRENCE, *Master.*
CHAS. C. TURNER, 1*st Mate.*
CHAS. SIMMONDS, 2*d Mate.*
J. H. TESSIERE, 3*d Mate.*
O. S. SAUNDERS, 4*th Mate.*
LEWIS CRANDAL, *Seaman.*
GEO. W. MOTT, *Carpenter.*
JOSEPH GOOLD, *Boatswain.*
Sailmaker.
JAMES MC'INTOSH, *Seaman.*
GEORGE WILCOX, *Seaman.*
F. WRATT, *Seaman.*
GEO. DAVIS, *Seaman.*
PETER NEILJER, *Seaman.*
CHAS. POLSTON, *Seaman.*
T. RYKERS, *Seaman.*

Endorsed, "Filed Feb. 16, 1852.
JNO. A. MONROE, *Clerk.*"

7/3.

In Admiralty.

CHARLES MINTURN
vs.
THE SHIP "HORNET."

We hereby consent that the ship "Hornet" may be released from the custody of the Marshal, by order of court, on the claimant filing with the clerk a bond, with sufficient sureties, in the sum of sixty thousand dollars, to be approved by us, that amount (sixty thousand dollars), being the agreed value of the vessel, in the usual form of admiralty stipulations.

JOHN H. SAUNDERS,
Proctor for Libellant.

To JOHN A. MONROE, Esq., *Clerk of the U. S. Dist. Ct.*
February 13, 1852.

Endorsed, "Filed Feb. 13, 1852.
JNO. A. MONROE,
Clerk."

To the Honorable Ogden Hoffman, Jr., Judge of the District Court of the United States, for the northern district of California.

The replication of Charles Minturn to the answer of Charles Parsons, respondent and claimant, alleges that he, the said libellant, will maintain and prove his libel to be true, certain, and sufficient, and that the said answer is uncertain, untrue, and insufficient, he prays as in his libel he has already prayed.

SAUNDERS, HEPBURN & HARNE,
For Libellant.

Endorsed, "Filed Oct. 1, 1852.
JNO. A. MONROE,
Clerk."

Admiralty.

MINTURN
vs.
"HORNET."

Issue joined Oct. 1, 1852. Furman, for claimant. Saunders, for libellant.

Endorsed, "Filed Oct. 1, 1852.
JNO. A. MONROE,
Clerk."

At a special term of the District Court of the United States of America for the northern district of California, held at the Court-House in the city of San Francisco, on Tuesday the 30th day of

November, in the year of our Lord one thousand eight hundred and fifty-two.

Present: The Hon. Ogden Hoffman, Jr., District Judge.

CHARLES MINTURN
vs.
SHIP "HORNET."

This cause having been heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation having been had in the premises, it is now ordered, adjudged, and decreed by the court, that the libellant do recover the sum of ninety-five thousand, two hundred and seventy-five dollars, together with his costs to be taxed.

OGDEN HOFFMAN, Jr.,
U. S. Dist. Judge.

Endorsed, "Filed Nov. 30, 1852.

JNO. A. MONROE,
Clerk."

UNITED STATES DISTRICT COURT,
for the Northern District of California:

In Admiralty.

CHARLES MINTURN
vs.
SHIP "HORNET," her tackle, &c.

The respondents intend to appeal from the final decree of this court made in this cause, to the Supreme Court of the United States.

Yours, &c.
MATTHEW H. FURMAN,
Proctor for Respondents.

To JOHN H. SAUNDERS, Esq., *Proctor for Libellant.*

Dated San Francisco, December 2, 1852.

JOHN A. MONROE, Esq.
Clerk of said District Court.

Endorsed, "Filed December 2, 1852.

JOHN A. MONROE,
Clerk."

714.

UNITED STATES DISTRICT COURT,
for the Northern District of California:

In Admiralty.

The SHIP "HORNET," her tackle, apparel, &c., ALEXANDER M. LAWRENCE and others, Claimants and Appellants,
vs.
CHARLES MINTURN, Respondent.

The appeal of Alexander M. Lawrence, Sheppard Knapp, Ross W. Wood, Alexander H. Grant, Jacob A. Westervelt, William Chamberlain, E. Stamler and N. P. Tyler, the above named claimants and appellants, respectfully showeth:—

That on the 30th day of January, 1852, the above named Charles Minturn filed his libel in the District Court of the United States for the Northern District of California, against the Ship "Hornet," her tackle, apparel, &c., in a cause civil and maritime for the recovery of damages, alleged to have been sustained by him by reason of the non-delivery to him, at the port of San Francisco, in the State of California, of two boilers, and two steam-chimneys, under and by virtue of a contract of affreightment mentioned in and annexed to said libel, and that the said Ship "Hornet" was arrested upon process issued upon said libel, and was discharged upon your petitioners filing their claim and entering into stipulation; and your petitioners thereupon filed their answer to said libel, and the said libellant replied thereto, and such proceedings were had in said cause that on the 30th day of November, 1852, a final decree was made and pronounced thereon by said District Court, wherein it was in substance adjudged that the said libellant recover against the said Ship Hornet, her tackle, apparel, &c., the sum of twenty-five thousand two hundred and seventy-five dollars, together with costs, which said decree of the said District Court is, as these appellants are advised, erroneous and ought to be reversed.

Wherefore the appellants appeal from the whole of said decree of said District Court to the Supreme Court of the United States, and respectfully pray that the said decree of the said District Court, and the said libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said District Court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem meet.

Dated San Francisco, December 3, 1852.

MATTHEW H. FURMAN,
Proctor for Appellants.
E. G. AUSTIN, *Advocate.*

UNITED STATES OF AMERICA,
State of California and City and County of San Francisco, ss:

Matthew H. Furman, of said city, Proctor for appellants in above case, being duly sworn, doth depose and say that on the third day of December instant, he served the preceding appeal on John H. Saunders, Esq. the Proctor of Charles Minturn, respondent, by delivering a copy thereof to said Saunders personally.

M. H. FURMAN.

Subscribed and sworn to before me, this 3d day of December, 1852.

HENRY B. JANES,
U. S. Commissioner.

Endorsed, "Filed Dec. 3, 1852.

JOHN A. MONROE,
Clerk."

UNITED STATES DISTRICT COURT,
for the Northern District of California:

In Admiralty.

The SHIP "HORNET," her tackle, &c., ALEXANDER M. LAWRENCE, *et. al.*, claimants, Appellants,
vs.
CHARLES MINTURN, libellant, Appellee.

Know all men by these presents, That we, Charles L. Case and Charles L. Heiser, of the city of San Francisco, in the State of California, merchants, are held and firmly bound unto the above named Charles Minturn, in the sum of fifty-five thousand dollars, to be paid to the said appellee, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the ninth day of December, in the year of our Lord eighteen hundred and fifty-two.

Whereas the above named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the District Court of the United States, for the Northern District of California.

Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

(Signed) CHARLES L. CASE, [L. S.]
CHARLES L. HEISER, [L. S.]

Sealed and delivered and taken and acknowledged before me, this 9th day of December, A. D. 1852.

JNO. A. MONROE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Northern District of California:

Charles L. Case and Charles L. Heiser, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

(Signed) CHARLES L. CASE,
CHARLES L. HEISER.

Subscribed and sworn to before me, this 9th day of December, 1852.

JNO. A. MONROE,
U. S. Commissioner.

Endorsed, "I approve of the within bond and the sufficiency of the sureties thereto. December 9, 1852.

OGDEN HOFFMAN, Jr.,
U. S. Dist. Judge."

"Filed December 9th, 1852.

JNO. A. MONROE,
Clerk."

By the Hon. Ogden Hoffman, Jr., Judge of the District Court of the United States, for the Northern District of California.

TO CHARLES MINTURN:—

Whereas, Alexander M. Lawrence, Sheppard Knapp, Ross W. Wood, Alexander H. Grant, Jacob A. Westervelt, William Chamberlain, E. Stamler and N. P. Tyler, claimants of the ship "Hornet," her tackle, &c., have lately appealed to the Supreme Court of the United States, from a decree lately rendered in the District Court of the United States, for the Northern District of California, made in favor of you, the said Charles Minturn, against the said ship "Hornet," her tackle, &c., and have filed the security required by law: You are, therefore, hereby cited to appear before the said Supreme Court at the city of Washington, on the ninth day of February next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of San Francisco, in said district, the ninth day of December, in the year of our Lord eighteen hundred and fifty-two, and of the independence of the United States the seventy-sixth.

OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
Northern District of California, ss.

Matthew H. Furman the proctor of the appellants, being duly sworn, doth depose and say, that he served on the appellee, Charles Minturn, on the ninth day of December, 1852, a copy of the appeal filed in this cause with the Clerk of the District Court of the United States, for the Northern District of California, on the third day of December instant (having on said last mentioned day served copy of said appeal on John H. Saunders, Esq., proctor of said libellant and appellee), and that on the said ninth day of December instant, he also served on the said Charles Minturn a copy of the within citation, by delivering said copy of said citation to the said appellee personally, and by leaving said copy appeal for said appellee in the clerk's office of the District Court aforesaid.

M. H. FURMAN.

Sworn to before me, this 9th day of December, A. D. 1852.
HENRY B. JANES,
U. S. Commissioner.

Endorsed, "Filed Dec. 9, 1852.
JNO. A. MONROE,
Clerk."

UNITED STATES DIST. COURT
of N. District of California:

In Admiralty.

SHIP HORNET, &c., A. M. LAWRENCE et al. claimants, appellants,
vs.
CHARLES MINTURN, respondent.

The following is a statement of the testimony on the trial of this cause before his Honor Ogden Hoffman, Jr., Judge of the said District Court.

The libellant offers in evidence a contract made between E. B. Sutton, agent of said ship Hornet, and Edward Minturn, and also the bill of lading, both annexed to his libel. The due execution of both is admitted.

(For copies of said contract and bill of lading reference is prayed to the copy libel and exhibits herewith annexed.)

James Donohue being produced, sworn and examined as a witness on the part of the libellant, deposes as follows:—

I am a boiler-maker, have worked at it 14 years; I know the steamer Senator; I do not exactly know what sized boilers she requires; the two boilers include a steam chimney each, unless they had spare ones; I would have made two boilers for the Senator such as she required, for $32,000; what I estimated before was her old

boiler, such as she has got into her now; I don't know whether they corresponded to the diagram exhibited to me; I made that calculation after inquiry as to prices; I only included the boiler, no appurtenances; I measured the Senator's boilers at the time I made the calculation; there is a great deal more labor on two boilers than one of the same weight as the two; the expenses of boilers depends on the price of iron, and the size of the boilers; I think it would be more laborious to make the boiler in the diagram than the one I estimated for.

Being cross-examined, the witness deposes: We made our estimate of the labor and the price of iron; the first thing I did was to ascertain how much iron there was in the market; I don't know how much it was per lb.; the market fluctuated very much; this was 8 or 10 days after the arrival of the Hornet; it would have taken three months or 14 weeks.

I cannot say how much such boilers would have fetched if landed here at Cunningham's wharf; irrespective of the steamer Senator or any other steamboat, I can't form any idea of their value; I would not have given $32,000 for them; I would have been willing to have given $20,000.

In boilers of this size the steam chimneys would have been from 25 to 35 feet in height; they go longer sometimes; I mean from the bottom of the boiler to the top of the steam chimneys; we always take the weight from the thickness of the iron and the number of square feet.

George A. Glugas, being also produced, sworn and examined as a witness on the part of the libellant, deposes as follows:—

I am a steam engine and boiler maker; am in charge of Sutter Iron Works; have had charge nearly three years; was engaged in that business before coming to this country.

It would have cost, to have constructed two boilers weighing about 34 tons (similar to that diagram), in January last, about $15,000 apiece; my estimate is not as accurate as I could wish, not having come prepared; I mean the boilers and steam chimneys, exclusive of grate bars, &c., which are always considered extra; a smoke-stack corresponding with such boilers would have been worth from $1,000 to $1,200.

Being cross-examined, the witness deposes as follows: I have never estimated before on this subject; I was not asked to estimate their value at the time the boilers arrived; the estimate I have given was at the prices in January last; I made it from my general knowledge of prices of wages, of machinery generally, and from their price at home; they would have been worth at home, from $5,000 to $6000 apiece; the prices would vary very little at home.

As an article of merchandise, their value would depend upon the wants of the person buying; if in demand, they would bring a good price; if I wanted them I would give a good price; I knew a boiler sold for $2,750 which cost $450; afterward the same boiler sold for

$350; it did not answer for the boat; my opinion is, that a boiler of that description is worth as much to a person wanting it as it would cost to manufacture it home; it being of an unusual size, it would not be worth much unless the party wanted it.

Jno. P. Gannett being also produced, and sworn and examined as a witness on the part of the libellants, deposes as follows:—

I am agent for the Union Line of Steamboats; have been agent about one year; brought out the Confidence here; have been connected with the line three years; had shipped from N. Y. boilers for the "Confidence;" the value of boilers, such as in the diagram, would depend on the demand; knowing there was a demand to create a value for them, I should have felt safe in giving $40,000 for them on speculation.

Being cross-examined, the said witness deposes as follows: This is from the knowledge that there was a demand; I would base my speculation on the fact that the steamboat would rather give a higher price than wait and be laid up; if they had arrived here and there was no demand, there would have been no sale for them; probably they would have to be kept until there was a demand.

R. J. Vandewater being also produced, sworn and examined as a witness on the part of the libellant, deposes as follows:—

I have been agent of steamers, and have knowledge of steam vessels; boilers of that description would cost about 35 to 37½ cents per lb., about $30,000, assuming the weight to be correct as given.

Being cross-examined, the said witness deposes as follows: Have never built a boiler here, but made very diligent inquiry when I wanted to build one; it was precisely like this one, as it happened.

Horatio N. Squire being also produced, sworn and examined as a witness on the part of the libellant, deposes as follows: (Ex'd on voir dire.) Am not interested in the event of this suit. (Ex'd in chief.) I am an agent for Mr. Minturn; in the early part of '51, an order for boilers was sent out, to replace the Senator's boilers, which we supposed would be worn out by a certain time; the present condition of the boilers is such that the boat can't run; she was drawn off in consequence, about the latter part of December, or beginning of January, 1852; this was prior to the arrival of the Hornet; all she has done since, has been to go to Sacramento to lay up; she would have been running but for that; boilers such as she requires have not been to be had in this market, since she has been laid up.

I don't know the weight of her old boilers; the new ones were to be larger; as near as I can remember, the new ones were to be about 20 per cent. larger, or a difference of 18,000 lbs. in the weight.

Being cross-examined, the witness deposes: New boilers are on their way here in the Alliot; have not heard that she put in in distress. Have heard they were brought out under deck this time.

Libellants rest.

Claimants object that there was no proof of ownership.

Objection overruled; exception taken.

Claimants open.

The libellant alleges, that the non-delivery of the articles specified in the bill of lading, was in consequence of the carelessness, negligence, and unskilfulness of the master; they do not allege unseaworthiness of the vessel; they must be restrained, therefore, to that allegation; but the court ruled that if the loss was occasioned by the overloading of the ship, proof might be given of that fact, and the libel sustained, to which ruling the respondents excepted.

William W. Lawrence being produced, sworn and examined as a witness on the part of the claimants, deposes as follows: I was Master of the Hornet from New York to San Francisco; have been master 16 years; have followed the sea 23 years; Hornet was launched in June, 1851; she was not excelled by any ship built in New York; she was a clipper; cost $112,000; the cargo was stowed by W. Mills; for the last 20 years he has always stood very high; I saw the boilers secured; the deck was prepared for the boilers; we selected what was considered the easiest part for the ship; it was prepared with a paring of pitch, covered with felt paper, and then a covering of inch board; the furnace part was forward; it stood about feet forward of the forward boat, and extended about 2 or 2½ feet aft of the after boat; there was six feet between sides of boilers and the water ways; the chock was on the after part; the after part was laid on the chock.

The first pennants crossed about 2 feet from after part of boilers. The second lashing was about 4 feet from the forward end of the furnace; the boilers came partially over the booby hatch; we placed under the deck what we called ½ midship stauncheons; they were direct under a double-header, and seamed with leather to prevent working; there was nothing extra to support lower deck; the ring-bolts were driven diagonally; there were spars called spreaders; there were 14 turns throughout the ring-bolt of 2½ inch Manilla rope; a bolt driven diagonally will not draw; they were not keyed, they went into the beam; they were 22 inches from the end; they will resist more if driven diagonally than if keyed; the steam chimneys were between the boilers and the capstan, touching the gipsies on each side,—they were lashed to the gipsies and to a shoot between them; the iron was one inch and ⅛ in thickness; they were fastened with 2 or 3 turns thro' the forward ring-bolt; the eyes of ring-bolts were about 5 inches; they were lashed under the superintendence of the mate, myself, and the stevedore; Mr. Mackay and Westervelt, the builders of the ship; one party who gave his name as underwriter's inspector; he came after they were placed on deck; the lashing was bought of Ayman & Co., on account of these boilers; it was new rigging; a few light goods were stowed beside of furnace doors; they were light cases, 18 inches on end, and 27 feet long, weighing about 50 lbs.; a barrel of onions and tomatoes; there was some 20 bbls. of provisions stowed under the bilge of the boiler; as the boiler stood on deck, highest part of perpendicular portion about 8 feet,

the barrels weighing about 260 lbs. apiece; sailed on the 23d August; discharged pilot about ½ past 3, that was on the morning of the 24th (sea time); I took my departure about 6 o'clock of evening; light winds, and easterly swell; my course was about E. S. E.; the morning of the 24th wind freshened; continued to have a good top-gallant breeze, until the morning of the 25th ult.; about 11½ P. M. we were under double reefed topsails; left on Saturday; got down to double reef Monday night following; gale increased on morning of 26th; we took a reef in the foresail; that morning we had foretop-mast staysail double reefed, fore and main topsails close reefed, mizzen top sails, inner jib and main spencer; the ship behaved different from any vessel I had ever commanded, considering her size, (15 or 1600 tons) and state of the weather; as we entered the Gulf Stream, the wind being to the southward and westward, raised a top-ping sea; action of the sea overcame the helm, and she would fall off; she would settle aft and take in water over her stern and bow, and plunge very heavy; our course was S. E.; she rolled very heavily; she would roll down to leeward and take in water over the rail, and the pressure of the water would keep her down there until she discharged it, and then she would roll over on the windward again.

During this time and from the commencement of the heavy weather, I discovered she made more water than when she left N. York. She was so sharp that very little water tells—four men in fifteen minutes could make her suck; she sucked at 9 inches. She made, during the heaviest weather, from (10) ten to (15) fifteen inches in a half watch. It must have come from under the rudder-case, wood end forward, down companion way and thro' her decks; the water thro' her decks did not reach the bottom it was absorbed by her cargo; we had our topsails down on the cap, and all hands putting extra lashing on the boilers; we put a reef in the foresail during the night.

The next day between 10 and 11, the wind shifted from S. W. to N. N. W.; we took in the spencer and squared away before the wind. The cross sea still continued, and the wind shifting made it much worse; took a heavy green sea over her bow; she rolled nearly as bad as before; this continued until sundown that night, when it lulled, after which we had more moderate weather; I observed during the continuance of the gale that woods ends aft had opened some ½ to ¾ of an inch, the plate over the rudder head had opened ½ an inch; the water ways had opened ½ an inch abreast of boiler; the seam along deck next water ways had opened ¼ of an inch; the wood ends on the forecastle so I could put my hand down; the after beam of the forecastle had broken; the right head chocks had raised about 3 inches in the centre; the copper on the main rail had snapped in two; she was pumped all the time during the height of the blow; they would throw in one turn 10 galls. each pump; we worked her about 15 turns a minute; we were pumping until some-

time after the gale; she made more water after the gale than before it commenced; she made so much more that we pumped every watch; spelled the sailors for 15 or 20 minutes.

The decks underneath the boilers appeared to have settled—there was a curve in them; from the gale until the boilers were launched the vessel was very restless; rolled; ships of her size and model with such a weight have done the same; her action was different from any that I had ever seen; her motion was sudden, had to keep your sea legs on board; my attention was attracted to the action of the ship, with regard to the boilers, during the gale; before launching the boilers, I consulted the mate and carpenter; we concluded we were not safe; that if the ship encountered another gale it was probable we would founder, judging from what we had passed thro' and the peril we had had; I supposed she would not live thro' many gales I had experienced at that season of the year; I drew up a paper at that time; the lat. and long. are as near as we could make it by observation.

Protest put in evidence.

After holding consultation with officers, I called all hands aft, told those who could not read and write to listen; I laid it on the capstan, signed it myself; officers signed, and all the crew who could write did so; no one refused; the boilers were launched on the 12th Sept., the steam chimneys on the 5th, preparations were made on the day after the protest; it took us about 70 hours to get them over from first unlashing of boilers; we launched them over the monkey rail on an inclined plane, same as a ship; it would have been impossible to launch them during the gale; could not have launched them without cutting the rail, which would have endangered the masts; besides, on going down they would have cut the ship thro'; we would have been obliged to cut the rail from channel to channel, a little more than the length of the boilers, about 30 feet of the rail; after the boilers were over, we experienced an equinoctial gale; at the time of launching them was a calm; equinoctial gale came on the 18th or 19th, lasted 36 hours; the wind was much heavier, carried away foretopsail yard with close reefed topsails; she was a different ship entirely in this gale in minding her helm, in her buoyancy, lay better to the wind, did not fall off so much; material difference in the quantity of water—we only pumped twice a day, sometimes three times a day; never had so much water in her as during the other gale; until our arrival at San Francisco leak decreased, sometimes not enough to keep her sweet; I feel fully certain in my own mind, that the ship with the boilers on board could not have lived thro' the second blow; had a very severe blow off the La Platte; had blows off Cape Horn; heavier sea than during the whole passage; the reason there was such an interval between the gale and the launching, was that the sea would not permit; everything in the bill of lading was delivered, except the two boilers and the steam chimneys; the freight list of the ship was 40 or 43,000 dollars, including freight on boilers;

the cargo was somewhat injured—I forget the amount; there was considerable damaged between decks and in the lower hold.

Being cross-examined, the witness deposes as follows: I have never commanded a clipper ship of this size. Never sailed in one. The only difference between the Hornet and other ships after she had her boiler off was, she would sail through the water faster. Did not ship any seas. We have had her with her helm down; she behaved well, excited no apprehensions of any kind. The gales were heavier than the first gale.

The distance between main and mizzen rigging was 35½ feet. Did not superintend the discharge of the Hornet. I know what was delivered by the accounts rendered to me, kept by the clerk and custom-house officer. The boilers were put on board under direction of Cunningham, Belnap, & Co., the machinists. They were received on board by the master, mate, stevedore, one of the builders. They were secured under the direction of William Mackay and the carpenter of the ship. The carpenter had been foreman of Westervelt & Mackay. He was selected by the builders of the ship to act as carpenter.

The gale commenced on the 26th August. It attained its height about 24 hours after. After wind veered took in fore and aft sail as useless, when we went off before the wind. She pitched very heavily; she was 9 or 10 knots. We made more sail at sundown. The wind was not a heavy gale; the sea was very heavy. Have crossed the Gulf a number of times; usually expect heavy weather. This was not as bad as I have experienced in crossing the Gulf. I never carried boilers on deck before. I made a slight objection to carrying them to one of my own family. I expressed no apprehension about carrying them; made no objection. Have been in a ship with heavy deck loads, once with an elephant.

Direct examination resumed. The ship was in the stream when the boilers were put on board. They came down on a derrick float, raised by a 30 horse power; the power was on the derrick float. Nothing on board the ship.

Respondent's advocate reads depositions of Charles C. Turner, 1st mate of the Hornet; George W. Mott, carpenter; Oscar H. Saunders, 4th mate; James H. Tessiere, 3d mate; and testimony taken under commission and exhibit, being a protest made at sea. Libellant reads *de bene esse* depositions of R. F. Harford, Charles Simmons, which are as follows:—

Exhibit B (annexed to Turner's testimony succeeding).

Lat. 31° 04′ N., Long. 61° 05′ W.

At sea, on board ship "Hornet" of New York, William W. Lawrence, master, bound from New York to San Francisco (Cal.).

We, the undersigned, master, officers, and marines, of the ship

"Hornet," of New York, do, after mature and serious deliberation, enter this solemn protest: That on the twenty-sixth day of August, 1851, the ship Hornet being in or about the long. of 69° W., lat. 37° N., experienced a gale of wind from south veering to north-west, and that during said gale, which lasted until the night of the twenty-seventh of August, the weight of the deck load, consisting of two boilers with furnaces attached, and two steam chimneys (the whole supposed to be of the weight of forty tons or thereabouts), did cause the ship to labor very hard, rolling gunwale deep, shipping large bodies of water, straining the ship in her upper works and decks, causing the ship to leak badly, and her pumps constantly worked, placing our lives, ship, and cargo in imminent peril for their safety. We now, therefore, do most solemnly and seriously assert that, for the future preservation of the ship, and thereby our lives and cargo, the said boilers, furnaces, and chimneys are unsafe on the decks, and for the safety of the whole should be thrown overboard as soon as possible, the weather and sea permitting. In testimony whereof to the above, we hereby subscribe our respective names.

(Signed)	WILLIAM W. LAWRENCE, *Master.*
"	CHAS. C. TURNER, 1*st Mate.*
"	CHAS. SIMMONDS, 2*d* "
"	J. H. TESSIERE, 3*d* "
"	O. T. SAUNDERS, 4*th* "
"	GEO. W. MOTT, *Carpenter.*
"	JOSEPH GOOLD, *Boatswain.*
	Sailmaker.
"	JAMES McINTOSH, *Seaman.*
"	GEO. WILCOX, "
"	LEWIS CRANDALL, "
"	F. WENTT, "
"	GEORGE DAVIS, "
"	PETER NIELSIR, "
"	CHARLES POLSTON, "
"	T. RYKER, "

DISTRICT COURT OF THE UNITED STATES,
for the Northern District of California:

In Admiralty.

CHARLES MINTURN
vs.
SHIP "HORNET."

We hereby agree to take the deposition by consent of Charles Turner, who is said to be now dangerously ill: this consent is on the condition that our cross-examination shall be finished, and is not to be read if the witness from physical inability, the advice of his physician or other casualty, shall be unable, or shall be considered unable to support the cross-examination throughout, or shall be with-

drawn. And on the further condition, that it is to be used only in case of the death of the said witness.

(Signed) SAUNDERS, HEPBURN and HAVEN,
for Libellant.
E. G. AUSTIN,
for Claimants.

"Feb'y 5, 1852."

In Admiralty.

CHARLES MINTURN
vs.
SHIP "HORNET."

Charles C. Turner, being duly sworn, deposes and says:—

I was first mate of the ship "Hornet" on her late voyage from New York to this port.

Have been at sea 17 years; I have commanded a vessel four years during that time; the ship Coriolanus I commanded last.

The log-book being shown witness, marked, he says:—

That is the log-book of the ship Hornet; all the entries made in that book were composed and made by me, except those made for two days previous to our arrival in this port; those were made by the captain.

Exhibit B being shown witness, he says: That is my signature, and the contents of that protest are true; it was signed by me voluntarily, and without fear or favor.

On the 26th August we were in a gale, it was pretty violent, the ship labored very heavily; the statements I have to make in regard to it are fully set down in the log; I have nothing to add to it; the ship made considerable more water than she had been making; when we left New York the ship was in a good condition, as to sea-worthiness and tightness; she made six or seven inches in twenty-four hours, when we started out; all ships make more or less water; the ship was well loaded, and in good sailing trim; she was loaded by a stevedore in New York, named Mills, called one of the best in New York.

I didn't think she was overloaded; from the time of leaving port, up to the date of the storm, she behaved very well, but in that storm she behaved very badly.

During the storm she rolled very heavily, and some of the smoke-pipes got adrift; boilers worked a great deal, and we had to get extra lashings on them; she shipped a great deal of water, and some of it came down into this cabin; the water in this cabin was so deep that the clothes in my trunk were damaged half-way up the trunk.

As near as I can judge, the weight of the boilers and fixtures were 49 tons.

The height of the boilers above the decks was about 12 feet at the forward end; they rested forward on boards that were sheathed on the deck, the after end in a regular bed; the furnaces were on the deck, and the tubes about 18 inches up from the deck.

It would be impossible to get the boilers overboard in a gale, unless by cutting the ship down, and it would be attended with danger.

After the first gale, the ship leaked a great deal more; six inches a day more, than when we left port; we pumped her every four hours.

When we launched the boilers, it was good weather and the sea smooth.

On the 16th or 17th September, another storm came up; it was a violent storm; the ship behaved entirely different from what she did at first.

The wind blew harder than in the first storm, but the first was worse for the ship, owing to the change of the wind; the sea was more regular in the second than in the first, though the storm was more violent.

Had the boilers been on deck, I thought some accident might have occurred from it, during the storm of the 17th; I was glad they were off the deck, both for my own safety, and that of the ship; the effect on the ship, had the boilers been aboard, would have been very hard; she might have foundered; in the first gale she met with an accident; the carpenter's house was stove.

In the second gale of 17th September, the foretop-sail yard was sprung; this was done by the violence of the wind, and laboring of the ship together.

In the second gale, as compared with the first, she acted like an entirely different ship; didn't roll or pitch so heavily, or ship so much water over her stern; she was more manageable.

During fine weather, after the boilers were thrown over for some eight or ten days, she leaked more than when we first came out of New York, and then she got tightened up; owing, I suppose, to the beams and joints getting back in their proper places.

Didn't make as much water during the second gale as in the first.

After the boilers were launched, I saw the deck was settled; they had resumed their original position; the working of the ship gradually brought back the frame and decks to its original position; after the boilers were thrown off, it was very evident that the decks had settled.

After these boilers were put on board, there was an inspection by an insurance agent; he came on board and examined them, to see how they were stowed and lashed; I didn't see him; in my opinion, they were properly stowed and lashed.

I estimated the weight by the appearance of their size, the thickness of their iron, and there was considerable loose iron, and by the difficulty we had in getting them over.

After the first storm, the crew were of the opinion, the same with mine, that it was dangerous for them to be on deck; that the ship was unsafe with them on board.

I never heard but one of the crew express an opinion to that effect.

I never heard any express a contrary opinion.

Cross examined.—The boilers were stowed along each side of the booby-hatch.

They were lashed with 2 inch rope, 15 or 20 turns, to heavy ring-bolts in deck, two each side; the ring-bolts went through the beams; I believe they were not clinched or riveted.

The beds were spiked down solid to the beams; when we left New York, the ship drew 18 feet 6 inches forward, 19 feet 6 inches aft.

The after end of the boilers I never measured, but think it was a foot less in height than the forward end, on top; I think the boiler was about 10 feet in diameter; I only judge from my eye, never measured them; they were 26 feet long.

After the boilers were off, I thought the ship drew six inches less, as near as I could judge; we had provisions also, stowed aft, about 40 barrels chocked around; they were a security to the boilers; had also a few boxes of matches—15—some wooden fenders, a few half-dozen, I believe.

The entries in the log-book were all made within twenty-four hours of their occurrence.

Direct resumed.

The other persons who signed the protest, so far as I know, signed the protest voluntarily; I told them particularly, if they did not sign it freely, and didn't think there was danger on deck, not to sign it.

It was signed the day of its date.

In my opinion, the boilers were dangerous things on deck; the only thing we could do with them, was to do as we did; if they had ever got adrift, we could not have controlled them, and the ship would have gone down.

I thought it was necessary to throw them overboard.

Cross-examination.

I objected to their coming on board; in my mind I thought they were things that never ought to have been shipped on deck, and so expressed myself.

To the best of my knowledge, Capt. Lawrence wrote the protest, and read it.

It was our option to sign it or not; he asked what our opinions were, and if we would sign it.

When we shipped water during the gale, we were running off, wind on our quarter, and sea, a cross sea, came aboard on the beam and quarter.

When the wind shifted from southeastward to northward, ship rolled much more heavily, and shipped a great deal more water; skysail yards aloft, and all the light spars, during this time.

Direct resumed.

I objected to boilers coming on board; my objections were, that when the builder was placing the chocks, I told him I thought they were too heavy, that was all my objection; as mate, what I said was nothing.

Had extra shores and fastenings under the deck.

(Signed) CHARLES C. TURNER,
by H. B. JANES.

721.

We hereby consent that the foregoing depositions of Charles Turner may be read *de bene esse*, in the above cause, as evidence in the trial, and hereby waive all informalities in the taking or signing them.

(Signed) J. P. HAVEN,
Proctor for Libellant.
M. H. FURMAN,
Proctor for Claimant.

Dated San Francisco, Feb'y 28, 1852.

I hereby certify, that the above deposition by me, made during my sickness, when I was unable to subscribe my name, and the same was subscribed by H. B. Janes, Esq., the U. S. Commissioner, is true and correct.

(Signed) CHARLES C. TURNER.

Dated San Francisco, Feb'ry 28, 1852.

1. Objected to on part of libellant.
1. As to captain's interest, and because it is hearsay.
2. As to masters and crew, because it is hearsay, and not evidence, for want of legal tests.
2. Objected to on ground of interest of mates and owners—and because it is hearsay, and not evidence, for want of legal tests.

Endorsed, "Filed February 5, 1852.
JNO. A. MONROE,
Clerk."

UNITED STATES DISTRICT COURT,
for the Northern District of California:

In Admiralty.

CHARLES MINTURN
vs.
The SHIP HORNET, her tackle, &c.

We hereby consent that the deposition of J. H. Tessiere, examined as a witness *de bene esse*, in this cause, on the part of the claimant and respondent herein, and the several depositions of O. S. Saunders and George W. Mott, to be examined as witnesses *de bene esse*, in this cause to-day, on the part of the said claimant and respondent (all severally examined before H. B. Janes, Esq., a Commissioner of this Court), may be used and read on the trial of this cause, provided the personal attendance of said witnesses cannot be had at the trial, subject only to exceptions to the evidence of said witnesses.

(Signed) JOHN H. SAUNDERS,
Proctor.

Dated San Francisco, February 18, 1852.

In Admiralty.

CHARLES MINTURN
vs.
The SHIP HORNET.

Testimony *de bene esse*, by consent, Feb. 16, 1852.

James H. Tessiere, duly sworn, says:—

I am twenty-four years of age, a seaman, an officer of the ship Hornet, now in this port; am third officer—she sailed August 23, arrived here have been at sea ten years, off and on; have been mate of the Barques Cora and Ohio.

The deck cargo of the Hornet, on her late voyage, was two boilers, smoke-pipes, and two small steam-pipes; they were stowed between the main and mizzenmast, close to the hatch; there was no passage between them and the hatch; they were of a round shape, except at one of the ends.

They were round, with a funnel on top, and a square part underneath; can't tell the dimensions of the square part; the round part rested in a bed; the square part, so near as I can estimate, was nine feet from the deck to its top.

The round part, at top, was about six feet high from the deck.

The rail of the ship from the top of the plank sheer to the top of the monkey rail, was 7½ to 8 feet.

The boilers were on different sides of the hatch; they were secured by bolts, driven in the deck, and lashings passed from the bolts over the boilers.

The chocks upon which the boilers rested, were fastened to the deck.

I joined the ship July 15.

I helped to stow the boilers.

Several persons came on board to see them, after they were stowed.

Question. Do you know whether one of these persons was an agent of the insurance office in New York?

Objected to.

Answer. I don't know.

The Hornet was loaded by a stevedore; don't know his name.

Exhibit B offered to witness, to prove his signature.

Objected to.

Witness says, that is my signature to that protest.

I remember the first gale we had; it commenced in the afternoon or evening, after 6 o'clock P. M.; we had our skysails set; we came down to close-reefed topsails.

It was about four hours from the commencement of the gale, to our sailing under close-reefed topsails.

The ship was very unruly during the gale; the deck was full of water; she has a flush deck; the sea was across; sea boarded us during the gale, midships and every ways; we sounded the pumps,

and found at one time twenty-two inches of water; this was 9 o'clock P. M., on the day following the gale.

She was pumped almost continually during the gale.

Prior to the gale, we had pumped the ship twice in 24 hours.

After the gale, the boilers were thrown overboard; after they were thrown over, we had to pump the ship only once in 24 hours.

She leaked most during the gale, abaft the mainmast, in her sides; she leaked through the deck.

I signed the protest, exhibit B, voluntarily; it was read to me; the statement there contained is true; I see now no reason to alter my mind.

The ship's behavior before and after the boilers were thrown over was different.

Before they were thrown over, she did not seem to have any control over herself; was shipping water, leaking badly, and steered badly, and was not seaworthy.

I mean by the last expression, uncomfortable; I do not know any of the upper works that parted during the gale.

The crew were employed a week or ten days in getting the boilers overboard.

I think they could not safely have been thrown overboard during the gale; we could not have moved such a body during the gale; it would not have been practicable to have cut the rail of the ship, and lashings of the boiler during a gale, to let them slide over.

We raised them with an hydraulic pump. In my judgment it was expedient and necessary to throw the boilers overboard.

I did not think the ship safe with them on board; I mean that there was too much weight on one part of the ship.

There were some brooms and light freight in the boilers; there was also pieces of wood put across from the water-way to stay them.

Cross-examined.—I have been voyages to the East Indies, South America, Europe.

The forward part of the boilers I should think was about 26 to 28 feet, abaft the mainmast.

Don't think the boilers were as long as the distance just named.

There was one lashing on each end of the boiler; there were about fourteen turns in each lashing.

Two ring-bolts at each end, through which the lashing passed; they were driven diagonally into the deck; the ring-bolts were taken out after the jettison of the boilers; the boilers worked on the deck during the gale, athwart ships.

Extra lashings were put on during the gale; there were rolling tackles put on for an extra lashing; these rolling tackles led to bolts in the deck, not the same as those through which the lashings passed; these extra bolts were used for hoisting up sails and yards.

They were put there to be used in case we wanted to put on a notch block; they were close into the rail of the ship.

These rolling tackles stopped the boilers from rolling.

The straps were put round the boilers, and the tackles hooked into them; the bottom of the boilers was 2 or 3 feet from the deck, so that these extra lashings made an angle from the boilers to the deck.

These ropes were very much in the way of the main-braces, top-sail-braces, &c.

They were in the way of working the ship.

We had a few boxes stowed in and around the boilers.

There was nothing stowed between the boilers, forward and aft the hatch; I don't think there were any provisions stowed around in the boilers, nor forward or aft of them.

There was nothing stowed in or around them, except the few brooms.

During the gale, the wind was from S. and E.; we were steering E. N. E.; wind changed to N. and W.; wind veered about 9 o'clock A. M., second day of the gale.

We had close-reefed topsails, main-spencer, and foretopmast-staysail.

When the wind changed, we took in the two last, and we were before the wind, and lay our course; before the wind changed, she made bad weather; she steered badly, minded her helm, not well, but minded her helm; I mean, that after the boilers were thrown over she minded it better.

She did not refuse to obey the helm; by "steering badly," I mean, she required more helm.

While the wind was from S. and E. the sea was with the wind.

It was not a very heavy sea.

The ship pitched badly, and shipped much water.

She shipped water over the bows.

She behaved worse after the wind changed, shipped more water, pitched more, rolled much; then she shipped water midships, steered quite badly, yawed much.

The decks were full of water during the first part of the gale; there was a certain quantity of water on the decks, during all the time; there was at one time six feet six inches of water on the deck, by the mainmast; it was 3 or 4 hours after a sea came aboard, rolling from side to side.

The gale was heavier after the wind veered to North and West; ship was running 8 or 9 knots; we were crossing the Gulf Stream at the time.

I have seen many gales of wind at sea; this was a heavy gale of wind, though I have seen heavier; we had heavier in the course of our voyage, very much heavier; then once or twice we were under shorter sail than in this gale; we were under close reefed main-top-sail.

I know that she leaked through her decks, because the water came through into my room, abaft the mizzenmast; when we had 4 feet

6 inches of water on deck, we opened one port on each side, but the water wouldn't run out fast enough; we didn't knock off any planks.

The water also came down into the cabin.

I only know she leaked elsewhere, because there was water in her hold.

Cannot tell whether she leaked in the decks forward of the mizzen-mast.

She had a leak during the voyage, about the stern-post; it was not found out until after the gale; it did not exist at the commencement of the gale.

She had made 22 inches of water in her hold, in about 4 or 5 hours; water came down the cabin companion-way, and forward cabin companion-way.

I felt my life in danger during the gale, after I saw how the ship was behaving; I saw that there was too heavy a weight upon the ship's deck.

Had the boilers not been upon the ship's deck, I should not have been afraid of my life.

Had had light winds, not much of a run; four days out.

If the boilers had not been on board, I think the ship would not have noticed the gale.

There was a consultation held on the quarter deck, before the Protest; Exhibit B was drawn up; the Captain, 1st, 2d, and 3d officers were present.

During the gale did not send down any spars.

Direct resumed.—During the 4 or 5 hours that I have spoken of, as the time preceding the finding 22 inches of water in her hold, we had been pumping all the time.

The carpenter's house was forward the main hatch; it was knocked to pieces during this gale; the rail, midships, was carried away; the water came over the rail while the port-holes were open, alternately on both sides; the decks were first prepared with rosin, paper over that, and then plank over that; under which the boilers were placed.

I am going to sea to-morrow.

Cross resumed.—The gale commenced at 6 o'clock P. M.; at 9 same evening discovered 22 inches water in the hold; during that time had been pumping incessantly, and had been pumping before the gale; once in 24 hours, and sometimes twice.

(Signed) J. H. TESSIERE.

Endorsed, Filed the 8th day of July, 1852.

JNO. A. MONROE,
Clerk.

U. S. District Court.

Charles Minturn
vs.
Ship "Hornet."

Charles Simmons duly sworn, says: I was 2d officer of the ship Hornet. We had an ordinary gale on the 26th of August last. It lasted for thirty hours. It was not a heavy gale. The ship acted as all other clipper ships would act. She shipped a good deal of water owing to the wind hauling suddenly about midnight. Her rail did not go under the water. She had not a single sail wet by salt water except the foretopmast stay-sail, which was wet by the sea. I had no conversation with the captain during the gale, in regard to throwing the boilers overboard. I had not any conversation with the other officers on that subject. [Objected to.] The captain asked me to look at the decks, saying, at the same time, Don't you think the deck is settling? I said I could not see the slightest damage to the decks, or settling, either by looking at the water ways, plank, or stanchions. The paint was not broken, nor the putty. He said he thought the deck was settled. The captain said, Mr. Simmons, we will have to have these boilers overboard. I asked him if he would put back, or keep the ship on and go into Rio? He said he would not put back or go into any port but that of destination. Told me he intended to heave them overboard at any rate. Charley Minturn is no friend of his (the captain's), and Minturn would kick up a dust about it. Captain Lawrence spoke to me about the protest about three days after this. He said, I have drawn a protest, and got it signed by the 1st officer, and I wish you and all the crew who can write to sign it. I went forward and called all hands up round the capstan. The protest was read before myself and all hands. The captain read the protest and said, Simmons, I want you to sign this. I signed his protest, and one or two signed it who could write.

I have followed the sea nineteen years. Have commanded a schooner. I did not in my judgment consider it necessary to throw over the boilers. I signed it because, by so doing, I thought I would get the good-will of the captain, and by so doing I might get to be chief mate of the "Challenge," or some other vessel. I am a captain's man.

I pumped the ship in my watch every four hours. I have sometimes pumped her twice owing to the pumps not heaving water, which was owing to the oil on board, which got in the pumps and prevented them from working well. She made the first four days we were out from twelve to fourteen inches in twenty-four hours. She made about the same during the gale; but during the gale a great deal of water went down the ventilators, which had been left open by the carpenter. She shipped during the gale two seas, and

those she shipped while she was "coming up" to the sea. She drew 17 feet 6 inches forward, and 18 feet 9 inches aft.

Throwing over the boilers made about three inches difference in her draft, not more. It takes a great weight to bring a ship of her draft down. The ship was manageable and steered well during the gale. She fell off from two and a half to three points when struck by a sea. She fell off from S. S. E. to E. S. E. as the wind veered. There might have been some danger in bringing the boilers, but I would have put her through, boilers and all. I did not see fit danger to have the boilers overboard. By cutting down the ship's bulwarks, the boilers might have been thrown overboard in a storm. I told this to the captain, but he said he did not wish to spoil the looks of the ship.

I saw no straining of the ship, or opening the seams, causing her to leak. I examined about the boilers, plank shears, butts, bulwarks, stanchions, &c., and saw nothing amiss. The boilers did not work during the gale. There was no injury done during the gale to the spars or rigging. All hands were called during the gale about midnight. At this time she shipped a heavy sea. The men were detained for an hour or so. The wind shifted when all hands were called, and they were not called again during the gale.

Inside of the boilers was a depot for everything; lumber, provisions, nicknacks, drygoods, and everything. The weight of everything inside and around the boilers was from ten to fourteen tons.

(Signed) CHARLES SIMMONDS.

Adjourned to 20th instant, at 3 P. M.

March 20, 3 o'clock P. M. Counsel for claimant attended at the Commissioner's office, waited for half an hour, and the witness or counsel not appearing for Libellant, it was adjourned to Tuesday 23d instant, at 2 o'clock P. M.

HENRY B. JANES,
U. S. Commissioner.

Tuesday, 23d March, 2 P. M.

Cross-examination.—I have sailed in the clipper ships "Sea Witch" and the "Iowa," also "Susan G. Owens," of Baltimore; all are clippers; on the 26th August, the Hornet, to the best of my recollection, was under close-reefed main-topsail and main-spencer, before the wind shifted, and also fore-top-mast stay-sail.

When the wind veered to N. W. we squared the after-yards, and kept a close-reefed main-top-sail on her, and I believe that we loosed and set the fore-top-sail reefed, and brailed the main-spencer up; we had not then any fore or mizzen-top-sail set.

I don't know how to build a ship; don't know how to rig one.

Two or three of the crew signed their names to the protest.

Exhibit B being shown the witness, he says: That is my signature.

I suppose that about fifty to sixty tons on deck, abaft between the main and mizzen-masts, would lighten her three inches, that is, if she was drawing 18 feet 6 inches aft, a weight of 50 to 60 tons would bring her down 3 inches; or, if she were drawing 18 feet 9 inches aft, throwing off 50 to 60 tons would lighten her draught to 18 feet 6 inches.

I should have launched the boilers *during* the gale, by cutting away her bulwarks; would have made sliders of the timber aboard, soaped, &c., and by standing by, with lashings to the boilers, when the ship surged I would have cut the lashings and let them slide over; I would have raised them up on to the skids by means of wedges, and if after launching one of the boilers, I thought that I could carry one, I should keep that on board; it would have taken, at quick work, about three hours to launch each boiler in this way.

I do not think that there was any danger of the boilers injuring the ship by striking the ship's side, with proper precaution to prevent it.

The boilers extended from well forward of the mizzen-rigging, about fourteen feet forward, to about five or six feet aft the royal back-stay, the main-sky-sail back-stay.

Cutting away the bulwarks between the two points named, would not have weakened the rigging; it would only have carried away the main-sheet chock, or we would have had to cut it away.

I left the Hornet in January; have been since that time working, off and on, on board ships.

Had money and friends, to whom I have applied to lend me money, and paid my living in that way.

[Objected to.]

I have worked on the Ocean Bird about a week, was also hauling boats up, to get them repaired on the wharf; have lived at the Monumental House, and with Mr. Richardson.

I had about $100 when I arrived here.

Have not been employed in any steamboat; Mr. Minturn told me to go on board a steamboat, but I found that there was another mate on board.

If I wanted a little pocket-money, I went to Mr. Minturn and he lent it to me, I giving him my due-bill for it; I am now in his debt a dollar or two.

I know Mr. Nathaniel Hicks, of this city; I never told him that Mr. Minturn paid my board in this city; never told him that I could get out of Mr. Minturn all the money I wanted.

I know Mr. Daniel Greene; I never told him that Mr. Minturn was paying my board, or that I could get what money I wanted of Mr. Minturn.

I was not disrated, or put off duty on the Hornet; I signed shipping articles for the voyage to San Francisco, and port or ports elsewhere; the written articles didn't terminate the voyage here; I left the Hornet here, the second day after her arrival.

My wages were paid under a suit before a magistrate.

(Signed) CHARLES SIMMONDS.

Examination held open to be further prosecuted, if desired by counsel.

UNITED STATES OF AMERICA,
Northern District of California, ss.

We, Henry B. Janes, and John A. Monroe, Commissioners appointed by the District Court of the United States for the Northern District of California, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States;" passed February 20, 1812; and the Act of Congress, entitled "An Act, in addition to an Act, entitled An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed March 1, 1817; and the Act entitled "an Act to establish the Judicial Courts of the United States," passed September 24, 1789, do hereby certify; that the reason for taking the foregoing deposition is, and the fact is, the witness was material and necessary in the cause in the caption of the said deposition named, and that he was about to proceed to sea.

We further certify; that on the 19th, 20th, and 23d days of March, in the year of our Lord one thousand eight hundred and fifty-two, we were attended by the proctors for the parties interested, and by the witness, who was of sound mind and lawful age, and the witness being by us first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by us reduced to writing in the presence of the witness; and from his statement, and after carefully reading the same to the witness, subscribed the same in our presence. We have retained the said deposition in our possession for the purpose of returning the same with our own hand to the court, for which the same was taken.

And we do further certify: that we are not of counsel or attorneys for either of the parties in the said deposition and caption named; nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, we have hereunto set our hands and seals, this 8th day of July, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States the seventy-seventh.

(Signed) JNO. A. MONROE,
HENRY B. JANES,
U. S. Commissioners, appointed by the District Court of the United States for the Northern District of California.

Endorsed. Filed the 8th day of July, 1852.
JNO. A. MONROE,
Clerk.

In Admiralty.

CHARLES MINTURN
vs.
THE SHIP HORNET.

Testimony de bene esse, by consent.

Feb. 18, 1852.

Oscar Saunders, being duly sworn says: I was the 4th officer of the ship Hornet on her late voyage; I am 21 years old; have been at sea five or six years; last vessel (ship America) that I was in, I was mate of; have been two years before the mast.

Hornet sailed from New York August 23, 1851.

She had on deck two boilers, two smoke-pipes, and some few other things; one other small pipe; these boilers were stowed between the main and mizzenmasts, abreast of the booby hatch, one on each side; they were secured by lashings passing round them, and through ring-bolts in the deck; by shores from the main water-way to the boilers, and they were shored on the inside, and lashed together.

The ropes passing round the boilers were 2 or 2½ inches in size; might have been larger; they were passed round the boilers 15 or 20 times.

The boilers were round, in part, one end was round on top and flat on the bottom.

They were about 18 to 25 feet long, and in the forward part about 10 feet in height, including the part where the pipe went on, and five feet wide.

The after part, round, was set in a chock, about 18 inches from the deck.

The rail of the ship is about seven feet high from the deck; that is to the top of the monkey rail; to the main rail about 5, to 5½ feet.

The chocks were fastened to the deck by bolts, driven through the deck and beams.

I came on board the Hornet August 4th; aided in stowing the boilers.

About 40 men were engaged in stowing the boilers; one of the persons was the captain's brother, Mr. A. M. Lawrence; two or three came with him; don't know them; they inspected the boilers; Mr. E. B. Sutton was there; he examined the fastenings of the boilers.

Exhibit B, "Protest," offered to witness for the purpose of proving his signature.

Witness.—I signed this paper. I signed it voluntarily; and, so far as I know, by the others also it was signed voluntarily. [Last clause objected to.]

726.

(*Exhibit* B admitted in evidence, and objections heretofore made, withdrawn.)

Witness,—This paper was read to me. Its contents are true. I signed it at the time it was dated; have now read it.

Cannot recollect the day of the month on which the first storm occurred.

We then had all our light sails set. The gale commenced at 6 o'clock P. M. We immediately commenced taking in light sail.

It was 6 or 7 hours from the time we commenced taking in sail, until we had reduced our sails to a close-reefed top-sail, main spencer, and foretop-mast stay-sail. During this time the ship behaved very badly. Before we took in sail, between 6 o'clock and 12 o'clock, she steered badly, took in much water, rolled heavily, shipped a good deal of water, a large quantity. We then had cross seas, wind from the southward and eastward.

She didn't pitch very heavily before the wind shifted; she rolled and shipped a large quantity of water; sometimes the water was four or five feet high on deck; never was on a ship that rolled more heavily than that vessel. The water from the deck went into the cabin, forecastle, and forward cabin.

The water was about 2 feet deep in the cabin at one time; in the forward cabin it was 4 or 5 feet deep. I mean that as she rolled from side to side it was 4 or 5 feet deep; on a level, about 2 feet deep. She shipped the most water about 11 or 12.

Sometimes she rolled so that her rail was under, and would stop there, and lay there sometimes 10 or 15 minutes, having no control over herself.

There was from 23 to 27 inches water in the hold at one time in the pump-well.

The morning after the gale commenced, I sounded the well, and found 23 inches of water.

We pumped most of the night. Eight men were pumping during most of the night.

During that day we continued pumping with eight men; during the gale we pumped the ship every 1½ or 2 hours. We pumped at intervals during the gale, and twice a day afterwards.

We pumped the ship during every watch, at intervals, every day from the day the gale commenced, until the boilers were thrown overboard.

The ship leaked a good deal from the commencement of the gale, until the boilers were thrown overboard.

The water that was shipped leaked through the deck.

The carpenter was standing by during the gale, ready to work himself, if called on.

The ship leaked most during the gale, on deck, under the boilers.

We pumped the ship twice a day after the boilers were thrown over, sometimes only once. This continued two or three weeks;

after that we only pumped her once a week or so, according to the weather, during the whole passage.

In my judgment, the cause of the heavy rolling of the ship during the gale was too much weight on deck; it was also the cause of the straining of the vessel.

Question.—Are the statements made in *Exhibit* B, "Protest," in regard to the behavior of the vessel during the gale, true?

Answer.—They are true.

Question.—Did the ship roll, pitch, labor, strain, and leak in the gale of the 26th and 27th of August, as set forth in the Protest, *Exhibit* B?

Answer.—She did.

Question.—Were the ship, cargo, and the lives of all persons on board, endangered by the condition of the ship at that time?

Answer.—They were.

Question.—To what did you attribute that danger?

Answer.—To having too much weight on deck.

Question.—At the time the protest was drawn up, did you deem it necessary to throw overboard the boilers for the safety of the vessel and crew?

Answer.—I did.

The deck-load of boilers was disposed of, thrown overboard as soon as possible.

They could not have been thrown over during the gale.

After the boilers were thrown over, the ship behaved better than before; she steered well, was more manageable, and we could carry more sail on her.

The upper-works of the vessel, the gangway rail, was stove in, both of them.

The rail was split and shattered, from the gangway forward, by the sea boarding her.

The carpenter's house was stove in, and the after-part of the beam of the topgallant foresail was sprung.

The weather was squally during the time between the gale and the day the boilers were thrown over; it was bad, squally.

The next storm we had of note, was when we were off the River Platte; it was four or five weeks after throwing over the boilers. We might have had one before that date, but I do not remember.

This was a worse storm than the one of the 26th of August; it was heavier.

During this gale, the ship behaved well. There was a heavy sea; she didn't roll as much, made less water, and didn't pitch as heavily. Very little water came on board.

I think there was a gale the 19th September. The seas rolled higher during this gale than the previous one, of August 26th; altogether the storm was more severe than the first.

At the time the boilers were thrown overboard, I thought it necessary to throw them over, for the safety of the ship and crew.

I did not think the ship safe with the boilers on deck after the first gale, because we were expecting heavy weather, and we knew that the ship couldn't live with them on deck, in heavy weather.

The decks were sprung; the seams of the deck were broken in some places.

Had the same weight with the boilers been scattered about the decks, I think she might have carried it in any other shape.

The decks were pitched, papered and boarded under the boilers.

The deck of the ship was settled under the boilers from three to four or five inches.

During the gale, while the boilers were on deck, the ship's stern would settle down heavily in the water, and would remain there a little; the water came up through her rudder-casing.

Cross-examined.—We close-reefed topsails about 12 P. M. on the night of the gale. The ship commenced behaving badly before that time, with single reefs in topsails. I have never been to sea in a clipper ship before; was in the "Maid of Orleans," a clipper brig, in the U. S. service.

The forward cabin is about 7 feet high, 10 feet long, and 30 to 40 wide.

The lashings of the boilers went through the two bolts at each end; these bolts went through the beams; don't know whether they were clinched.

It took about half an hour to pump her when she had 23 inches of water in her.

23 inches was found in the ship four or five times; once there was more, 27 inches.

The first time was the morning after the gale begun.

The second time was in the afternoon of that day.

The third was in the night of that day.

The fourth was the next day.

I know that the ship leaked through the deck, because the water came through the deck into my berth, in the forward cabin, which is abaft the mizzen-mast.

I know she leaked under the boilers, from the fact that the cargo was wet, and because I went down and saw the water coming through into the said room during the gale.

There were about ten barrels of beef stowed away on the sides of the boilers, and one barrel of vinegar; there were also four to six barrels stowed between the boilers.

There was some light stuff in the boilers, a few brooms, some empty barrels; don't know how many.

Forty or fifty brooms.

The barrels between the boilers were covered with some old sails on top.

There were also some pieces of timber; a spar was placed fore and aft, to which they were lashed.

The two smoke-pipes were stowed forward of the boilers.

There were barrels and boxes stowed forward of the boilers.

There was also the steam drum on deck.

The smoke-stacks were four or five feet in diameter, 12 or 15 feet long; only one tier of boxes shoved in loosely in these.

Provisions and spare spars were stowed between the main and foremast.

There were six water casks on deck, 120 gallons average.

We opened one port on each side during the gale; did not stave any of the bulwarks out to let the water out.

Each port is about 2½ feet square.

I saw the deck had settled by the stanchions; when they were first put in they fitted to the deck; when the boilers were removed there was three or four inches space between them and the decks.

Ship was by the wind all the time that the gale was from southward and eastward; when the wind veered to north and west, we steered our course.

Then, when the wind veered, we were before the wind.

Myself and all hands were on deck nearly all that night, the night of the gale of 26th August.

I do not remember whether the ship was scudding that night or not; I did not know what the course was.

When the wind veered, we had three close reefed topsails, main-spencer, and fore-topmast staysails; took in main-spencer when the wind changed.

Did not make sail in my watch next morning, nor from 12 to 4, to my recollection.

I think we made sail during the night of the 27th.

Next day weather was squally; don't recollect about the sails.

I think the gale begun to abate the morning of the 28th.

There was, I believe, on that morning more sail made on the ship, single reef main-topsail, double reef fore-topsail, double reef mizzen-topsail, and double reef foresail.

This was not a very heavy gale of wind, not as heavy as I have seen, and not as heavy as we had afterwards.

I have crossed the Gulf Stream three or four dozen times before.

In the winter time the weather there is generally rough; in summer less so.

The weather was heavier this time there, than I ever experienced at the same season.

I have crossed the Gulf Stream once or twice in August, have been on the coast a good deal, and been up and down the length of the Gulf, but never saw such weather as this at that season.

I do say that the boilers upon the deck of the "Hornet," caused her to labor and roll as she did, as stated in the protest, Exhibit B.

During the night of the 27th August, the weather was squally.

Sometimes the squalls made us take in our top-gallant sails, single reef fore and mizzen-topsails, and haul up mainsail; don't know that we were reduced to shorter sail than this during the squally weather;

have had during this weather as much as a main-royal and top-gallant sail; when we threw over the boilers the weather was calm and light; didn't know the decks were sprung, until after the boilers were taken off.

I think there was too much weight in the place where the boilers stood, and that caused the decks to leak and to settle.

Captain Lawrence laid the protest, Exhibit B, on the capstan, called all hands aft, read it to them, and said if that was their opinion, they might sign it, or leave it alone.

He added, in substance, that from a consultation with the officers, he had concluded to throw the boilers over any way, whether they signed the protest or not.

There was no discussion among the men, at the time the protest was placed upon the capstan.

There was a previous consultation between the officers; it was broached first to me, between the time of the gale, August 26, and the time they were thrown overboard.

The officers discussed among themselves the propriety of throwing them overboard, because they were endangering the lives of all on board.

The master did not call me to a consultation.

Direct resumed.—The ship was pumped during the first night of the first gale—I believe, about fifteen minutes, every four hours.

The pumps throw water well. There were two pumps agoing that night, sometimes eight men to a pump, and sometimes more. They throw out forty gallons each, per minute, as near as I can judge. The men worked each time about fifteen or twenty minutes. Sometimes they pumped half an hour, and sometimes less.

The timbers, I have mentioned, were placed under the boilers, to keep them in their place, and the barrels to keep the timbers in their place, and a spar lashed over the latter to keep them in their place.

The boxes by the steam-pipes, some of them were full, and some of them were empty. Those filled, I think, had oil-cloths. I know they were light from handling them. They weighed from thirty to forty pounds each, sixteen in number. I am not certain as to the number.

Before the boilers were launched overboard, I could perceive that the decks were sprung. After the boilers were thrown off, the water stood for a week on the spot where the boilers had rested. I think the deck came back to its original place before we reached San Francisco. The main stanchions under the boilers were loose after we arrived here; I think they were loose before we arrived here, because they were so when we arrived. I know very well that when we left New York they were stationary, and could not be moved or shaken by the hand. I mean they could not be moved without heavy action upon them.

On the night of the 27th, I don't know the exact point which the ship was steering.

The Captain was aft, up all night, giving orders.

I do not think the boilers could have been carried in the same shape on any part of the deck, any more safely than they were on that portion of the deck where they lay.

I think the ship was not in sailing trim when she left New York, with those boilers on deck.

She sailed very well.

To all appearance she was sea-worthy when I left New York, or I should not have come in her.

Cross-examined.—Ship was pumped every night and morning for about ten minutes each time, from the time we left New York, up to the time of the gale. I do not know whether the boilers worked any on decks—never saw any appearance of their having done so. Have examined them.

There were extra lashings put on during the gale, put on for fear the others might part, and then they would hold the boilers. They remained on a day or so. Before the protest, I noticed that the decks were sprung, because the water stood on the deck under them, in calm weather, after the gale. I mean by calm, a steady, light breeze.

I am about to leave this city for parts unknown.

(Signed) O. S. SAUNDERS.

UNITED STATES OF AMERICA,
Northern District of California, ss.

I, Henry B. Janes, a commissioner duly appointed by the District Court of the United States for the Northern District of California, under and by virtue of the acts of Congress, entitled, "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1852; and the Act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789; do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness was material and necessary in the cause in the caption of the said deposition named, and that he was about to proceed to sea, all parties consenting to the taking of the same.

I further certify that, on the 18th day of February, in the year of our Lord one thousand eight hundred and fifty-two, I was attended by the proctors for the parties interested, and by the witness, who was of sound mind and lawful age, and the witness being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness; and from his statement, and after carefully reading the same to the witness, was

subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of returning the same with my own hand to the court, for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal, this eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the seventy-seventh.

(Signed) HENRY B. JANES,
U. S. Commissioner,
Duly appointed by the District Court of the United States for the Northern District of California.

Endorsed, Filed the 8th day of July, 1852.
JOHN A. MONROE,
Clerk.

In Admiralty.

CHARLES MINTURN
vs.
THE SHIP HORNET.

Testimony de bene esse, by consent.

Feb. 18, 1852.

George W. Mott being sworn, says: I came from New York on the ship "Hornet;" am carpenter; a shipwright; it is seventeen years since I commenced working journeyman, as ship-carpenter; I am 33 years old.

I worked on the ship Hornet, in building her; commenced four weeks before she was launched; worked until August 16, except one week.

I considered the Hornet a strong built ship; I saw the "N. B. Palmer" while she was building, and have seen other clippers building.

The "Hornet" was as strongly built as any I have ever observed; timbers as strong and large as clippers of her size generally have.

There were six upright shores under the beams on each side, where these boilers were to rest; they were drove up with an eighteen pound sledge; I superintended the work, putting them in; there were also chocks put down on the deck, for the boilers to rest in; they were fitted into the deck, and bolted through the deck and beams.

The bolts through the chocks were driven diagonally; bolts driven in that manner, where there are two, will hold more than if driven perpendicularly.

There was one chock under the end of the boilers aft; the flat part rested upon the deck, directly upon the boards, fastened to the deck; under these boards was paper and pitch.

The chocks were 16 inches high in the centre; they were placed upon the deck under my supervision; I received orders from Mr. Westervelt how many bolts to put in, and how to put them in; Mr. W. is one of the firm who built the Hornet; the elder of the two.

Mr. Mackay superintended the building of the ship: Wm. H. Mackay: he is one of the firm of Westervelt and Mackay.

The bolts driven through the chocks were about 3 feet long; the outer end of the chocks was 2 feet; I gave orders to have them driven through the beam; they are now through the beams on the under side, or the portions that remain of them; they come through sufficiently to break the wood, so as to see they were through; they do not come below the surface of the wood; my orders were to have them driven flush with the under side of the beam.

This was all done out in the stream at New York; I drove ring-bolts close up to the end of the chock; they were $1\frac{1}{4}$ inches; came through the deck and beams about one inch; they were 15 inches long; there were two to each boiler, on opposite sides; the ring-bolts were driven into a hole $\frac{1}{8}$ of an inch smaller than the iron, a little diagonally; they were driven inclining, about $1\frac{1}{2}$ or 2 inches in 15; I fitted chocks at the square end of the boilers, from the boilers to the stanchions; I then fitted in, between the boilers, on the steam chimneys, notched in, a beam—extending from one boiler to the other; this was lashed on with a rope, $3\frac{1}{2}$ inches in size; this beam was 7 × 8 inches, between the boilers at the same end; resting in the man-holes was another beam, extended in the same way, 6 inches square.

The boilers were lashed with 3 inch rope, as I think, and passed over the boilers eight or ten times, and fastened to the ring-bolts; I was present when they were lashed.

The steam-chimneys were laid forward of the boilers; they were lashed to the braces, in the boilers, the front plates of the boilers being off; the second day out we removed one of the chimneys to the main hatch, and secured it to ring-bolts by side of the main hatch; it was then secured by a rope and chain, both made fast to the ring-bolts; these ropes were made fast to the braces in the steam chimneys; a rope also passed over the chimney, and was fast to the ring-bolt.

The other chimney was moved in front of the two boilers, about midships, and these lashed to the braces in the boilers, with a rope passing over about 10 turns.

The other lashings were fastened to the gipsey bitts, posts about 12 to 14 inches square passing through the upper deck, and setting on the lower deck; the bitt is a post; the gipsey is a windlass fastened onto the side of the bitt.

A gentleman who said he was sent off by the Insurance Company

to see how the boilers were secured, came on board (objected to as hearsay); he didn't give his name.

Question.—What did he say and do?

Objected to.

Answer.—He stopped there about an hour and saw me drive the ring-bolt, and said he was satisfied with the fastening of these bolts; said he intended to send off two or three coils of rigging, to lash the boilers with; these were sent off.

I saw no one else inspecting the boilers; I was present during all the time that all the boilers and pipes, &c., were put on board; they were not entirely secured when I left the ship that night.

We got under way, on Saturday, August 23, 1851. It was on the third day out that we first experienced a gale.

I have been at sea about two years; was master of a vessel.

In the morning they commenced reefing sails; through the night they had clewed up some of the sails; my watch was 4 to 11 o'clock, during the night of the gale; during that time she shipped a great deal of water, rolled very heavily, pitched very deep in lying to, and leaked in seams adjoining the water ways, so that we were obliged to keep the pumps going constantly during the day; we generally had eight men to each pump.

These pumps were very good for throwing water; I think they would throw out 5 to 8 gallons at every stroke; would make three or four strokes in a minute to each pump; they were double pumps.

This pumping was continued during the third day and third night, and next day; through the day of the gale, we pumped every two hours.

It was blowing very fresh when I came on deck in the morning of the third day out; they had taken in some sail.

I kept no note of the time.

I have commanded vessels; fore and aft schooners, of 75 to 180 tons, from New York to Philadelphia, and Fredericksburg, Virginia.

I did not keep a log; I paid attention to the carrying of sail and so on.

As near as I can come at it, each pump is allowed to throw thirty gallons a minute; sixty gallons for the two; I found 22 inches water in the vessel at one sounding, during the gale, at another 17 inches; at night before I turned in, there were 15½ inches in the pump, the next morning there were 18 inches.

At night I sounded again, and found, I suppose, between 17 and 18 inches.

I usually sounded the pumps at morning and at night; when I sounded the well during the gale, and while the boilers were on deck, I used to find from 14 to 17 inches, on an average; during this time we used to pump regularly at morning and night after the gale.

Then we used to pump from 15 to 20 minutes each time; in sounding the water, we could get at the depth of the water on top of the keel.

The boilers were thrown over somewhere about a week after we had the first gale; it would have been impossible to have thrown them over in the gale.

There was a great deal said during the gale as to the weight of the boilers, and their causing the ship to roll; the captain and officers and first mate, second mate and myself talked of it.

Orders were given me to stand by and be ready to cut away the bulwarks and rail, in case the boilers got adrift; I did so.

The boilers worked some in their fastenings, during that storm; we could see that they worked as the ship rolled; during the first gale the steam chimney in front of the boilers gave way, and all hands were employed in securing it again, and did secure it.

During the gale, I perceived that the deck was settled 1½ to 2 inches, under the boilers; the vessel was strained across her transom frames, in her wood ends, and leaked badly by means of that strain.

She settled so deep in the sea the first gale, that her wood ends were strained so that they opened three-eighths of an inch.

She leaked very badly around the rudder-chamber; she also leaked midships, by the gangway. When the wind shifted, she pitched into three very heavy seas, and shipped water so that it was knee-deep to me on the deck.

I went below to examine as to the leak about the rudder, and found that there was no way to remedy it.

While I was in the cabin, the ship received large quantities of water through the rudder-casings, and as I was coming out of the cabin, I saw that there was one foot to one and a half feet water in the second cabin and pantry. Three men were busy baling out water from about 9 o'clock A. M. until about 4 P. M. in the cabin and fore-cabin. The butts in the water-ways were open, so that I had to calk them immediately after the gale.

With the weight of the boiler on during the second gale, I think it would have been worse for the ship, as the seas were much larger, and the gale much worse.

The effect of the load would have been, I think, to render it almost impossible to keep her afloat during the second gale.

The leakage injured the cargo some under the boilers.

I think the cargo would have been injured generally.

The first three days out we had light winds; the ship rolled considerably for such weather. The ship was pumped every day out from New York, up to the time of this gale, once a day.

New ships require pumping once a day, generally.

I sounded the pumps every day, from the first gale up to the time of throwing over the boilers. After they were thrown over, I sounded them every morning for three or four mornings; then I found that she didn't leak so as to require sounding so often.

The first or second day after the boilers were thrown over, I found about fifteen inches of water.

The water in the ship decreased day by day after the boilers were

thrown over. We had a second gale about a week after the boilers were thrown over. I sounded the well at that time; the water was 13 to 14 inches.

From the first gale to the time of throwing over the boilers, I found 15 or 16 inches every morning; this was after the first gale was over. I also sounded at night. The third mate attended to sounding when I hadn't time.

Mr. Saunders also, occasionally. The pumps were used morning and night until the boilers were thrown overboard. We pumped half an hour sometimes, and estimated pumps to throw thirty gallons each per minute.

The deck recovered itself, nearly, after the boilers were removed. The seams gradually closed up before the ship arrived in this port. The boilers pressed the deck down, and opened the seams in the water-ways, and when the deck came up again, it closed the seams up.

The captain held a consultation several nights with the first and second mates and myself, and asked our advice as to the boilers remaining on deck. He asked our opinions as to the workings of the ship. The officers said they thought it unsafe; this was before the protest was shown to me. After our conversation, Captain Lawrence showed me the Protest, Exhibit B. I signed it at the time it bears date. I considered the ship and lives of all on board in danger during the gale, and afterwards in anticipation of another gale, while the boilers were on deck.

I signed the Protest voluntarily. The statements therein made were then, and are now, my opinion. I have no reason to change it.

I went to the foundry to get the dimensions of the boilers, and had the weights given to me. I saw them.

They were 22 feet long, I think.

The round part was 95 inches in diameter.

The furnace part was 8½ feet across (the square end), and eight feet high. The extreme top was 9 or 10 feet high. They said the boilers weighed 13½ tons each. The foreman of the foundry told me this.

The steam-chimneys were 4½ tons each.

The bars alone, I think, weighed 30 tons.

I saw them passed out at this port, from the hatch.

I saw a lot of bars and grating passed out from the hatch, but don't know whether they belonged together, but I think the grate bars belonged to the boilers.

In my judgment the boilers weighed, each, without the chimneys, between 13 and 15 tons.

Each of the steam-chests weighed, I think, four and a half tons.

Adjourned to 19th inst. at 12 M.

February 19, 12 M.

Examination resumed.—During the gale of the 26th August the carpenter's house was stove; the battens were bursted off the main-

hatch. The rail and panel were stove on the port side. The after beam of the top-gallant forecastle on the starboard side was broken. The battens were also bursted off the fore-hatch by the shipping of the seas.

The chocks, on the rail forward over the rightheads, raised up some three-quarters of an inch. I had to draw them down again with bolts. The decks were strained forward, and leaked very badly, so that the seamen complained of the leakage, and I had to calk it.

The captain told me, the first day of the gale, that if a favorable time came, he intended to have the boilers thrown over. He first directed me to make preparations, after I had signed the protest, to throw them over; this was within less than a week after the gale. We had a hydraulic pump, and raised them by means of it.

I made preparations, but the weather was unfit to commence at it that morning; the next morning, weather fair, we commenced at them. There was some rolling at this time, which made us very cautious how we handled the boilers. I mean that there was quite a ground sea, with light winds. We like to have met with a very serious accident while working at the first boiler.

The weather, during the day that we threw over the first boiler, was quite pleasant; there was a light squall in the evening of the second day that we were getting the boiler over. Before that, for several days, and after the first gale, the weather was not very rough or very smooth; it was ordinary. We were expecting the equinoctial storm at that time.

When we left New York, the between-deck stanchions were taut. There are holes bored through their centre, and bolts passing through; head on top of the beam, and nuts below the lower beam. They are of locust and of substantial sound wood, and secured in a substantial manner. They were secured before the lower stanchions in the hold where put up.

After the boilers were thrown over, I discovered that they were open; I think some three-quarters of an inch or more. That opening could not have been caused by any ordinary pressure. I think the weight of the boilers, on top of the shores, settled the lower deck so as to cause the opening. The outside shores were open some two inches when the boilers were removed.

Cross-examined.—I was engaged on the 16th of August by Captain W. W. Lawrence and Mr. Westervelt to go out as carpenter of the ship. The directions for securing the boilers were given by Mr. W. and Captain L. to me in New York, and I superintended them.

It is customary in all clipper ships at the present day to secure the between-deck stanchions as I have described those of the Hornet. It is intended to prevent the decks parting, and also to prevent the decks springing up.

The usual arch of a ship of her size, the crown of the beam is usually four to six inches in forty feet. There were stanchions to every beam under the boilers; they rested on the lower deck beams,

and were supported by them. The lower deck beams were supported by stanchions which rested on the kelson. The lower deck stanchions have a tunnel in the head going into the beam; the lower end have tenons going into the beam. They were placed each side under the beams, midway between the centre and wings of the vessel, six on each side, six to nine inches thick; they rested on the lower deck over the beam; their length was six to seven feet. The boilers were within about six feet aft, five feet forward. The boilers were about twenty-two feet long. There was twenty feet, or might have been more, between forward part of the boiler and mainmast.

I am familiar with the construction of the Hornet as a shipwright.

I should think she was capable of carrying a third deck if properly loaded. If she had a third deck, I think she could carry light cargo. I have worked in three deckers. The manner of fastening three deckers generally is not heavier framed or better secured than the Hornet's second deck. Her frame is very heavy, heavier than some three deck ships.

The ring-bolts through which the lashings of the boilers passed, were not clinched, keyed, or riveted beneath the beam; I saw that the deck had settled by the water standing there; I saw it the first day after the gale; it continued to settle while the boilers were on deck.

On first leaving New York, there was only a ground swell; ship rolled considerably; some of the officers and myself noticed that the ship rolled quite heavy for such a sea; this was the first day out; she continued to roll in that manner, until the gale the third day out; we thought that the weight of the boilers caused her to roll as described; the seams which opened in the water-ways were not calked until the boilers were thrown over; they might have been calked immediately after the gale, but were not; there were some butts in the water-ways, two of them calked before the boilers were thrown over; these were 10 inches long.

We also calked around the forecastle; don't think any other calking was done until after the boilers were thrown over.

I couldn't remedy the leak about the rudder case, because we couldn't have got at it; had we taken the rudder-cap off, it might have been dangerous in case of shipping water; her case is the same as all other ships that I have seen.

The water came through above the top of the flange or rudder casing, and came through in large bodies; I mean that the water swashed up the rudder case, and ran over into the cabin; the rudder case run up level with the deck beams, turned over on to these, and there fastened.

There is a flange fitted to the cap, and goes down the rudder case to turn the water off.

I calked the mouldings around beneath the deck inside, where the

water came through; this prevented a greater part of the water coming through.

The gale commenced in the night; I have commanded a vessel, and made voyages in that capacity; in bad weather, I took note of the weather, and generally the sail the ship was under; I don't pretend to be a seaman, but understand the names of the sails; I feel myself competent to command a fore and after, coasting between New York and Philadelphia; if I should find the light sails off, and the topsails reefed, I think I should notice it; not certainly, but I should notice it if the sails were reefed.

If I had gone down at night, leaving the sails up, and none furled, and they should be taken in during the night, I think I should notice it on coming up in the morning; they had taken in some sail when I went below; heard them taking in sail while I was below; was generally called out from 4 to 5 o'clock; on coming on deck, I don't recollect whether I noticed that she was under double or close-reefed topsails; but know she was under snug sail, or reduced sail; when called at 4 o'clock, was not called for any particular purpose that I know of; it was my usual hour for turning out; the ship was then behaving badly, but afterwards behaved worse.

I was first called to "stand by" the boilers between 10 and 11 o'clock in the forenoon; the day following the night when the gale commenced.

The boilers worked a little sideways when the ship rolled, so much that some of the men were afraid to go forward of them to aid in lashing the steam chimney when it got adrift; I think it was the weight on deck that made her roll so heavily; the boilers had a tendency to do so.

When I didn't sound the well myself, the sounding rod was measured by me.

In New York she would suck down to 10 inches of water; on the first night out, I did not sound; the next day she had 13 to 16 inches, in the evening not quite so much, and the average, up to the gale, was about 13 to 16 inches; if a ship is upon an even keel, I can tell the exact quantity of water on the floor of the ship, by sounding.

Any means that would not give the true quantity of water in the ship, would not be shipshape, and would be improper.

The captain first consulted me the night of, or night after the gale; think it was the night after the gale.

The wind shifted some time during the day, after the gale, to the westward. On coming up I found water on the decks. We knocked out a port on each side the water; went out fast. She took in as much water, as she rolled, as passed out of her. The reason why we did not knock the bulwarks away was, that we thought it better to leave them as a protection from the water that otherwise would have rushed on board.

Her yard arms did not dip when she rolled. At times she rolled

her top-gallant rail under, shipping large quantities of water over the rail.

I know there were barrels stowed round the boilers.

The ring-bolts I suppose to be about 14 or 15 feet apart.

The greater part of the water in the cabin came through the rudder case, when she sunk so low. I think her sinking so low was caused by the weight of the boilers on deck.

Have not noticed the water coming through since the boilers have been off.

Mr. Westervelt wanted me to come with the ship to San Francisco, to superintend the launching of the boilers here. Before the gale, one night it was remarked that the ship rolled heavily for the sea we had. The first and second mate, and boatswain, and myself, were standing around the boilers, talking thus about it: They said that the boilers were properly lashed, and well lashed. I don't know that the fact of the boilers being on deck caused any apprehension at that time. Some thought the boilers caused her to roll so heavily; others that it was her width of beam.

She didn't roll as heavily during the second gale, as at the first. Don't think we had any cross sea during the second gale.

The seas were longer, but more regular than the first gale, blowing harder, however.

I don't think I gave the necessity of throwing over the steam-chimney with the boilers much consideration at the time. I only thought of the necessity generally of throwing them all overboard, and of clearing the decks of the boilers and irons attached to them.

There were between 40 and 50 persons on board.

I believe all signed the protest who could write their names. No objections were made by any, and some others would have signed, if they could have written their names.

Exhibit B offered and shown the witness for the purpose of eliciting a description of the boilers.

Witness says: I think that is a pretty correct outline of the boilers, not exact.

Direct resumed.—Mr. Westervelt spoke to me respecting my coming to California with the boilers, before I signed the articles.

The centre of the boilers were nearly over the stanchions. I measured the boilers; have almost forgotten, but think they were 22 feet long. They occupied the space over three beams, and nearly the fourth; the distance between the beams was six and a-half feet. Have forgotten the length of the deck where the boilers lay.

Light freight is usually carried on the upper deck.

I don't think the frame of the second deck, now the main deck of the Hornet, would require to be any stronger for a third deck.

I never before was in a square-rigged vessel at sea. I don't know that I could have calked any more seams than I did calk, with the preparations I was making. I was making preparations to get the boilers off, and to calk the seams. I calked all I thought necessary to calk, forward, wherever I saw the seams open.

I calked all I could calk.

I never saw the water come over the rudder-casings after the boilers were removed.

There was nothing more needed, according to common way of fitting out rudder-casings, to make that of the Hornet more complete. All that I have ever seen are put in the same way that ship Hornet's are.

I should have noticed what sail the vessel had. Believe I noticed off Cape Horn sometimes; don't recollect of any particular time there. I don't pretend to know much about the sails any way.

I did not notice the chocks on which the boilers rested moving when the boilers moved. Should have noticed them if they had moved.

The bottom of the boilers would work about $\frac{3}{4}$ of an inch, the top about 6 inches.

In the commencement of the gale, I think the wind blew from the eastward.

The wind was on the port side. I am not certain, but I think so.

The steam-chimneys were thrown over before the boilers.

The crew were unanimous in the feeling that it was necessary to throw over the boilers.

Cross-examination resumed.—I know the sails of a ship, the topsail and main-spencer. A reef is a portion of the sail tied upon the yard.

I helped pull and haul on deck one night, to reef the topsail three times.

I know when the sails are close-reefed; when all the nettles are tied up, I suppose the sails are close reefed.

I should in emergency, when the vessel was making water, calk or batten the seams. I had no chance to do this during the gale. I couldn't have calked the seams in the water-way entirely; could have calked one in a day.

I was employed the day after the gale in fitting beds under the spars, to keep them from chafing the deck, and in packing up my tools.

Within a week after the gale I was employed in cutting up the boilers to throw them overboard. Had I not been so employed, I could have calked where it was necessary.

Direct resumed.—Two or three of us commenced cutting the boilers in two; came to the flues, and gave it up. Don't think, with the means we had on board, that we could ever have cut them up. The cold-chisel would have given out. We gave it up because we thought it would be bad weather before we could finish the job.

At the time we were engaged cutting up the boilers, we were afraid of bad weather; we were then shipping spray, but not much water. There were things of more importance than to attend to those calkings.

I expect to leave town soon, for parts unknown.

(Signed) GEORGE W. MOTT.

UNITED STATES OF AMERICA,
Northern District of California, ss.

I, Henry B. Janes, a Commissioner duly appointed by the District Court of the United States for the Northern District of California, under and by virtue of the Acts of Congress, entitled "an Act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "an Act, in addition to an Act, entitled an Act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed March 1, 1817; and the Act entitled "an Act to establish the Judicial Courts of the United States," passed September 4, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness was material and necessary in the cause in the caption of the said deposition named, and that he was about to proceed to sea, all parties consenting thereto.

I further certify that on the 18th and 19th days of February, in the year of our Lord one thousand eight hundred and fifty-two, I was attended by the proctors for the parties interested, and by the witness, who was of sound mind and lawful age, and the witness being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness, and from his statement, and after carefully reading the same to the witness, was subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of returning the same with my own hand to the Court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this eighth day of July, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States the seventy-seventh.

(Signed) HENRY B. JANES,
U. S. Commissioner,
Duly appointed by the District Court of the United States for the Northern District of California.

Endorsed, "Filed the 8th day of July, 1852.
JNO. A. MONROE,
Clerk."

U. S. District Court,
Northern District of California:

In Admiralty.

Charles Minturn
vs.
The Ship Hornet, her Tackle, &c. } Affidavit.

Northern District of California,
City and County of San Francisco, ss.

Charles Parsons, respondent in the above entitled action, being duly sworn, says, that he cannot safely proceed to trial therein without the testimony of certain material and necessary witnesses residing in the city of New York, to wit:—

1st. William H. Mackay, of the firm of Westervelt and Mackay, the builders of the above ship "Hornet."

2d. Smith, the foreman of said firm, or any other person being the superintendent of the building of said ship.

3d. George Mills, the stevedore, by whom the cargo of said ship was stowed, and the boilers, &c., secured.

4th. E. B. Sutton, the agent of said ship.

5th. , the inspector of the underwriters, who examined and inspected the boilers and chimneys placed upon the deck of said ship, and the fastenings thereof.

6th. T , the master of the floating derrick which brought said boilers and chimneys to said ship.

7th. Cunningham and Belknap, the manufacturers of said boilers and chimneys, and the other articles enumerated in said libel and exhibits.

8th. The F , the foreman or superintendent of said Belknap & Cunningham.

9th. Murphy, the pilot, who took said ship to sea on her late voyage from New York.

And deponent states that the names of several of the above mentioned witnesses are at present unknown to him, but that the same can readily be ascertained in New York, and that their attendance can be procured before a commissioner appointed to take testimony in this case. And he further states, that the facts expected to be proved by said witnesses above enumerated, are as follows, to wit:—

1st. That said ship was well and very strongly constructed, and was designed and built for the transportation of a full and heavy cargo from New York to San Francisco, and was in all respects equal to the best class of New York clipper built ships.

2d. That at the time of leaving New York on her late voyage, said ship was stanch, strong, and sea-worthy, and in good sailing trim, and was not overloaded or unmanageable.

3d. That the cargo of said ship under the hatches was stowed with

great skill and care by a competent and experienced stevedore, and with reference to said boilers and chimneys being carried on deck.

4th. That said boilers and chimneys were properly secured on the deck of said vessel, and to the satisfaction of the inspector of the underwriters.

5th. That the weight of said boilers and chimneys, and the other articles enumerated in said libel and exhibits filed herein, was far greater than the weight specified in said exhibits, and exceeded fifty tons. That said articles were not manufactured at the date of the agreement made 19th July, 1851, and annexed to said libel, and that the extra weight was not disclosed to the agent of the owners, nor the underwriters, nor to any person or persons connected with the ownership or navigation of said ship.

And deponent further states that a commissioner is required to take the testimony of each and all of said witnesses, and that he believes ninety days from the time of the departure of said commissioner to be the shortest period within which said testimony may be taken, and said commissioner returned.

And this deponent farther saith that the said ship Hornet is bound on a voyage to Panama, and thence immediately back to this port.

(Signed) CHARLES PARSONS.

Sworn this 19th February, 1852, before me,

HENRY B. JANES,
U. S. Commissioner.

Sirs: Please to take notice, that on affidavit made in the above entitled cause, with a copy whereof you are herewith served, I shall move this court, on Monday next, at 11 o'clock in the forenoon of that day, or so soon thereafter as counsel can be heard, for a commissioner to issue to Stephen Cambeleng, Esq., counsellor at law, of the city of New York, to take the testimony of the above witnesses in regard to the facts and matters above set forth on behalf of the respondent herein, and to be executed and returned by said commissioner according to law, within the time named in the foregoing affidavit.

Yours, &c.

(Signed) MATHEW H. FURMAN,
Proctor for Respondent.

Dated San Francisco, 19th Feb. 1852.

J. H. SAUNDERS, Esq.,
Proctor for Libellant.

Endorsed, "Filed February 24, 1852.

JOHN A. MONROE,
Clerk."

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court-room, in the city of San Francisco, on Tuesday the 24th day of February, in the year of our Lord one thousand eight hundred and fifty-two:

Present: The Honorable Ogden Hoffman, Jr., District Judge.

CHARLES MINTURN,
vs.
The SHIP HORNET, &c.

On motion of M. H. Furman, Esq., proctor for the claimant in this case, it is ordered that a commissioner issue, under the seal of this court, to commissioners in the City and State of New York, to take the testimony of witnesses, to be read on the hearing of this cause in this court, the names of such commissioners and witnesses to be inserted in the said commission by consent of proctors, and proceedings herein to be stayed ninety days, except so far as relates to taking of testimony *de bene esse*, before a commissioner.

Endorsed, "Filed February 24, 1852."

UNITED STATES DIST. COURT
for N. District of California:

In Admiralty.

CHARLES MINTURN
vs.
The Ship HORNET, her tackle, &c.

On reading and filing an affidavit made by Charles Parsons, respondent in this action, on behalf of claimants, and notice of motion for Commissioner to issue in this action to take the testimony of certain witnesses named or described in said affidavit on behalf of said Claimants; and on hearing counsel for Claimants and for Libellant for and in opposition to said motion, it is ordered, that a Commissioner issue to Stephen Cambreleng, Esq. (or in case of his inability to act, to Orsanus Bushnell, Esq., and in case of his inability to act, to Edgar S. Van Winkle, Esq.), all of the city of New York, in behalf of Claimants; and to Alexander H. Dana, Esq. (or in case of his inability to act, to Wm. H. Leonard, Esq., and in case of his inability to act, to Isaac P. Martin, Esq.), all of said city, to take the testimony of said witnesses, and to return the same within the time mentioned therein, or such future time as this Court may order; and further, that in case of the inability of either of said Commissioners to attend said examination, the other may proceed to take the same, after giving due notice in writing to the absent Com-

missioner; each party to have the right to appear at the examination in person, and by counsel.

Endorsed, "Filed March 1, 1852.

JNO. A. MONROE,
Clerk."

UNITED STATES DISTRICT COURT,
for the Northern District of California:

In Admiralty.

CHARLES MINTURN
vs.
The Ship HORNET, her tackle, &c.

Interrogatories on part of Claimants.

Interrogatories to be propounded to *William H. Mackey* and *others*, hereinafter *named* or *described*, residing in the city of New York, witnesses, to be produced, sworn and examined on behalf of the Claimants herein, viz:—

First.—To William H. Mackey.

First interrogatory: What is your name, age, and occupation, and where do you now reside?

Second interrogatory: Do you know the Ship Hornet, above named, which left New York for San Francisco on or about the 23d August last?

Third interrogatory: By whom was said ship built?

Fourth interrogatory: Are you a member of the firm of Westervelt and Mackey, the builders of said ship?

Fifth interrogatory: How long have you been engaged in the occupation of a ship-builder?

Sixth interrogatory: What is the character of said Ship Hornet, as to strength of construction, quality of materials used in building her, and in all other respects?

Seventh interrogatory: How does she rank and compare with the best class of New York clipper-built ships, in point of sea-worthiness, strength, solidity of construction, quantity and quality of material of which she is built, and with reference to a full and heavy cargo? How many and what clippers have you built? Name them.

Eighth interrogatory: In what manner were the decks of said ship supported?

Ninth interrogatory: Did you examine said ship after she was fully rigged and completed, and while, or after, one or more boilers and chimneys had been placed on deck to be transported to San Francisco?

Last interrogatory: Do you know any other matter or thing

which may tend to the advantage and benefit of Claimants in this action? If so, declare the same fully and particularly.

Second.

Interrogatories to be propounded to the foreman of Westervelt & Mackey.

First interrogatory: State your name, age, occupation, and place of residence.

Second interrogatory: Are you in the employ of Westervelt & Mackey? In what capacity, and how long have you been so?

Third interrogatory: How long have you been engaged in the occupation of a ship-builder?

Fourth interrogatory: Do you know the Ship Hornet above named?

Fifth interrogatory: Had you any part, and what, in building said vessel? When was she built?

Sixth interrogatory: Of what materials was she built? State generally as to the quantity and quality thereof as compared with other ships of the same class.

Seventh interrogatory: What is the character of said ship as to strength of construction, and in all other respects?

Eighth interrogatory: How does she rank and compare with the best class of New York clipper-ships as to strength, solidity, quantity and quality of materials, and ability to carry a full and heavy cargo?

Ninth interrogatory: In what manner were the decks of said vessel built, and how were they supported?

Last interrogatory: Do you know any other matter or thing which may tend to the advantage or benefit of claimant in this action? If so, declare the same fully and particularly.

Third.

Interrogatories to be propounded to *George Mills*, the stevedore, by whom the cargo of said ship was stowed, and the boilers, &c., secured.

First interrogatory: What is your name, age, occupation and place of residence?

Second interrogatory: How long have you been engaged in the occupation of a stevedore?

Third interrogatory: Do you know the Ship Hornet above named?

Fourth interrogatory: By whom was the cargo of the said ship stowed?

Fifth interrogatory: Did you take on board and secure the boilers and chimneys?

Sixth interrogatory: Was the cargo stowed with reference to the boilers and chimneys being carried on deck?

Seventh interrogatory: Did you examine said ship after said cargo was stowed and said boilers, &c. taken on deck?

Eighth interrogatory: How was said cargo stowed, as far as skill and care were concerned?

Last interrogatory: Do you know any other matter or thing which may tend to the advantage or benefit of claimants in this action? If so, declare the same fully and particularly.

Fourth.

Interrogatories to be propounded to *E. B. Sutton*, agent of the ship Hornet.

First interrogatory: What is your name, age, occupation, and place of residence?

Second interrogatory: Did you have any conversation with Edward Minturn respecting the weight of the boilers and chimneys placed on deck of said ship Hornet prior to signing the contract dated 19th of July, 1851, a copy whereof is hereto annexed, marked A? If so, state fully and particularly the substance thereof.

Third interrogatory: Did you have any conversation respecting the same after said date? If so, state fully and particularly the substance thereof.

Fourth interrogatory: Did you see said boilers and chimneys after the same were placed on the deck of said vessel? If so, what, in your opinion, did said boilers and chimneys weigh?

Fifth interrogatory: Did you receive any intimation whatever, or did the master or owners of said ship or officers thereof receive any intimation, so far as you are aware, from Edward Minturn, or any other person whomsoever representing the libellant in this action, that said articles, enumerated in said two exhibits hereto annexed, exceeded forty tons in weight, before or after the same had been taken aboard of said vessel?

Sixth interrogatory: Were you on board said vessel at the time said boilers were taken on board? Was Edward Minturn or any other person acting as the agent of libellant on board at that or any other time? If so, were any remarks made by him, or in his presence, respecting the weight of said boilers, &c., and what? And in respect to the manner in which the same were secured and fastened on the deck of said ship?

Seventh interrogatory: Do you know the stevedore by whom said ship was loaded? If so, state his name, and what is his reputation as a stevedore?

Eighth interrogatory: How was the cargo of said vessel stowed, so far as skill and care were concerned?

Ninth interrogatory: Were the articles specified in the contract made between yourself and Edward Minturn manufactured at the time of the making of said contract? If not, how did you arrive at

an opinion of their weight? Who represented to you the supposed weight?

Last interrogatory: Do you know any other matter or thing which may tend to the advantage or benefit of claimants in this action? If so, declare the same fully and particularly.

Fifth.

Interrogatories to be propounded to ————————, the inspector of the underwriters, who examined and inspected the boilers and chimneys placed upon the deck of the said ship, and the fastenings thereof.

First interrogatory: What is your name, age, occupation, and place of residence?

Second interrogatory: How long have you been engaged as an inspector of an insurance company?

Third interrogatory: Did you examine the ship Hornet, above named, after certain boilers and chimneys had been placed upon her deck and secured, during the month of August, 1851?

Fourth interrogatory: In what capacity, and for what purpose, did you visit said vessel, and examine said boilers and the fastenings thereof, and at whose request?

Fifth interrogatory: What was the result of your examination; and what was your opinion as to said boilers and chimneys of said ship? the manner in which the same were secured, so far as relates to the sufficiency and strength of the fastenings thereof?

Sixth interrogatory: Did you make any report in writing, or orally, of your opinion as to the sufficiency and strength of the lashings; and to whom did you make such report? If it was in writing, produce the same, or a copy thereof.

Last interrogatory: Do you know any other matter or thing which may tend to the advantage or benefit of claimant in this action? If so, state the same fully and particularly.

Sixth.

Interrogatories to be propounded to ————————, Master of the "floating derrick," which brought to said ship the boilers, chimneys, and other articles enumerated in the exhibits hereto annexed.

First interrogatory: What is your name, age, occupation, and place of residence?

Second interrogatory: How long have you acted as master of a floating derrick?

Third interrogatory: Did you, as such master, convey certain boilers, chimneys, and other articles enumerated in the exhibits hereto annexed, to the ship Hornet above named, in the port of New York, during the month of August last? If so, state particularly how many thereof were so conveyed by you.

Fourth interrogatory: State particularly the character of the apparatus by which the boilers were placed on the deck of the Hornet. Its power.

Fifth interrogatory: Have you any means of knowing the exact weight of each boiler? If so, state the same. If you do not know the exact weight, state what means you had of forming an opinion of the weight of each boiler, and what is that opinion?

Last interrogatory: Do you know any other matter, or thing, which may tend to the benefit and advantage of the claimants in this action? If so, state the same, fully and particularly.

Seventh.

Interrogatories to be propounded to ——— *Cunningham* and ——— *Belknap*, of the firm of Cunningham, Belknap, & Co., manufacturers of the boilers, chimneys, and other articles specified in the two exhibits hereto annexed.

First interrogatory: State your name, age, occupation, and place of residence.

Second interrogatory: Have you any interest in the said boilers, chimneys, and other articles aforesaid? Or in the steamer Senator, for which the same were designed? Or in the event of this action? If so, state fully and particularly the nature and extent of said interest.

Third interrogatory: For whom were said boilers, chimneys, and other articles ordered? Who gave the order? Have they been paid for? and if so, when, and by whom?

Fourth interrogatory: What was the price agreed upon for said boilers, chimneys, and other articles aforesaid? and what was the real value thereof in the city of New York? Were these boilers sold by you by the pound, or how otherwise?

Fifth interrogatory: What was the exact weight of said boilers, chimneys, and other articles enumerated in the exhibits hereto annexed? State fully, particularly, and separately.

Sixth interrogatory: Were they all manufactured on the 19th July, 1851? If not, when were they finished? State the dates particularly.

Seventh interrogatory: What were the dimensions of the boilers and furnaces, and other articles mentioned in the two exhibits, A and B, hereto annexed, shipped on board of the Hornet? Give the dimensions, shape, and weight of each piece. How thick was the iron of which the boilers were constructed? How thick the iron of the furnaces and of the chimneys? Whether or not, did these boilers contain return flues? If so, describe the number, form, and shape, of said flues. Produce your books of account containing the entries made at the time in relation to said boilers, chimneys, and other articles enumerated in the two exhibits hereto annexed. State

fully and particularly what those entries are—point them out. Are they all the entries made in reference thereto? Are those entries genuine and true?

Last interrogatory: Do you know any other matter or thing which may tend to the benefit or advantage of the claimants in this action? If so, state the same, fully and particularly.

Eighth.

Interrogatories to be propounded to ————————, the foreman of Cunningham, Belknap, and Co., manufacturers of said boilers, chimneys, and other articles enumerated in exhibits, and hereto annexed.

First interrogatory: What is your name, age, occupation, and place of residence?

Second interrogatory: Have you any interest in said boilers, chimneys, and other articles aforesaid, or in the steamer Senator, for which they were designed, or in the event of this action? If so, state fully and particularly the nature and extent of such interest.

Third interrogatory: By whom were said boilers, chimneys, &c. ordered, and for whom?

Fourth interrogatory: What was the price agreed upon for them? Have they been paid for? What amount was paid? And what was the real value thereof?

Fifth interrogatory: What was the exact weight of said boilers, chimneys, &c.? State fully, particularly, and separately.

Sixth interrogatory: What were the dimensions of said boilers, &c.? State particularly the weight and dimensions of each piece enumerated in exhibits "A" and "B," hereto annexed.

Seventh interrogatory: Were they all manufactured on the 19th July, 1851? If not, when were they finished? State the dates particularly.

Last interrogatory: Do you know any other matter or thing that may tend to the benefit or advantage of the claimants in this action? If so, state the same fully and particularly.

Ninth.

Interrogatories to be propounded to ———— *Murphy*, the Pilot, who took said ship Hornet to sea from the Port of New York on the 23d August, 1851.

First interrogatory: What is your name, age, occupation, and place of residence? And how long have you followed such occupation?

Second interrogatory: Do you know the ship Hornet above named?

Third interrogatory: Did you take said vessel to sea from the Port of New York, on or about the 23d August, 1851?

Fourth interrogatory? Had said ship any deck cargo on board, and what? State fully and particularly.

Fifth interrogatory: At what time in the day did said ship get under way?

Sixth interrogatory: Was she towed down the Bay of New York, and how far?

Seventh interrogatory: How long did you remain on board of said vessel after the steamer left her? And what distance did she sail during that time?

Eighth interrogatory: What was the state, force, and direction of the wind and of the weather on that day? What was the state of the sea? Was there any swell, and how much?

Ninth interrogatory? How did said ship behave so far as your observation extended, during the time you were on board?

Tenth interrogatory: What was the condition of said ship on said day, in respect to sailing trim? How did she (said ship) compare with other ships of the same class, as to manageability? How did she answer her helm? How was she affected by the swell of the sea?

Eleventh interrogatory: How did said ship appear to be affected by the weight and quantity of her cargo, and of said boilers, &c., and how far did the same appear proportioned to her size and capacity?

Last interrogatory: Do you know any other matter or thing which may tend to the benefit or advantage of the claimants in this action? If so, state the same, fully and particularly.

(Signed) MATHEW H. FURMAN,
Proctor for Claimants.

ELY AND RANKIN, AND E. G. AUSTIN,
Advocates.

San Francisco, March 1, 1852.

The preceding interrogatories settled by consent between ourselves, subject to all legal exceptions.

(Signed) JOHN H. SAUNDERS,
Proctor for Libellant.

March 1, 1852.

Exhibit A, mentioned and referred to in the preceding interrogatories.

Shipped, in good order and well-conditioned, by Edward Minturn, on board the ship called the Hornet, whereof Lawrence is master, now lying in the port of New York, and bound for San Francisco, California, to say—

Two boilers, and two steam-chimneys for ditto.
Eight pieces sheet iron work. Three pieces pipe.
One band. Two hundred and four grate bars.
Sixteen grate bar bearers. Eight boiler bearers.
Six man-hole plates. Eight boiler doors.
One bundle (four) bolts. Two boxes.

Being marked and numbered as in the margin; and are to be delivered in the like good order and condition at the aforesaid port of San Francisco (the danger of the seas, fire, and collision only excepted), unto Charles Minturn, or to his assigns, he or they paying freight for said boilers, steam-chimneys, and other iron work, forty-five hundred dollars, with 5% primage and average accustomed.

(The whole to be discharged as soon as convenient, and to be received at Cunningham's wharf, in San Francisco, without other than the usual charge per day for discharging.)

In witness whereof, the master or purser of said vessel hath affirmed to four bills of lading, all of this tenor and date: one of which being accomplished, the others to stand void.

(Signed) WM. W. LAWRENCE.

Dated in New York, the 19th day of August, 1851.

Freight	4500.00
5% primage	$225.00
	$4,725.00

Goods to be received at the vessel's tackles when ready for delivery, not accountable for breakage, leakage, or rust. Freight payable before delivery, if required. Contents unknown.

E. B. SUTTON, 84 Wall St. Dispatch Line, California Packets.

Exhibit B, mentioned and referred to in the preceding interrogatories.

Memorandum of agreement to ship on board the ship "Hornet," by Edward Minturn, Esq., two boilers, two chimneys or steam-chests, smoke-pipes in sheets, and some grate-bars, in all about forty tons weight, from this port to San Francisco, California, for the sum of forty-five hundred dollars, with five per cent. primage: the whole to go on deck, except the grate-bars and the sheet-iron for smoke-pipe. It is understood that the shipper is to put them on the deck of the vessel at his expense, and the ship is to discharge them as soon as convenient, and they are to be received at Cunningham's wharf, in San Francisco, without other than the ordinary charge per day for discharging. It is further understood that the said boilers are to be ready to go on board the vessel on the 9th day of August, or as soon thereafter as the ship may require them, giving shipper two days' notice thereof.

(Signed) EDWARD MINTURN.
" E. B. SUTTON,
Agent for Ship and Owners.

New York, July 19, 1851.

U. S. DISTRICT COURT,
for the Northern District of California:

In Admiralty.

CHARLES MINTURN
vs.
The SHIP HORNET.

Cross-interrogatories to be propounded to William H. Mackey and others, herein named and described, residing in the city of New York, to be produced, sworn, and examined on behalf of the claimants herein.

First cross-interrogatory to E. B. Sutton.

If in your answer to the fourth interrogatory in chief you answer that, in your opinion, said boilers and chimneys weighed more than forty tons, state the facts which form the basis of your opinion.

Second cross-interrogatory to the master of the floating derrick.

If in your answer to the fifth and sixth interrogatories to you in chief you state that, in your opinion, the weight of the boilers and chimneys therein mentioned exceed forty tons, state the facts upon which you form your opinions of said weight.

Third cross-interrogatory to Cunningham and Belknap.

What is your means of knowing the weight of said boilers and chimneys?

The preceding cross-interrogatories settled by consent between ourselves, subject to all legal exceptions.

(Signed) M. H. FURMAN,
March 1, 1852. *Proctor for Claimants.*

The President of the United States of America to Stephen Cambreleng, (or in case of his inability to act) to Orsamus Bushnell, (and in case of said Bushnell's inability also to act) to Edgar S. Van Winkle, Esq., all severally of the city of New York (on behalf of the claimant), and Alexander H. Dana, (or in case of his inability to act) to William H. Leonard, (or in case of said Leonard's inability also to act) to Isaac P. Martin, Esq., all severally of the city of New York (on behalf of the libellants), greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any [L. S.] two of you, full power and authority to examine all and each of the several witnesses named or described in the interrogatories (on behalf of the claimant), hereto annexed as witnesses in a certain cause depending in the District Court of the United States for the Northern District of California, wherein Charles Minturn is libellant against the ship Hornet, her tackle, &c., on the part of the claimants of said ship, upon oath, upon the interrogatories annexed to this commission, and to return the same

annexed to this commission, unto the said court, with all convenient speed, closed up under the seals of you, or any two of you, the said commissioners.

Witness: Honorable Ogden Hoffman, Jr., judge of said court at the Northern District of California, this first day of March, in the year of our Lord eighteen hundred and fifty-two, and of our independence the seventy-sixth.

(Signed) JNO. A. MONROE, *Clerk,*
U. S. District Court, Northern District of California.

The execution of the within commission appears by the several depositions and schedules annexed hereto.

Witness our hands and seals, this 18th day of June, 1852, at the city of New York.

(Signed) S. CAMBRELENG, [L. S.]
A. H. DANA, [L. S.]
Commissioners.

Depositions of William Mackey, George Mills, Francis Cunningham, Effingham B. Sutton, Joseph Belknap, Charles T. Betts, Charles McDonald, Russell W. Glazier, and Michael Murphy. Witnesses produced, sworn and examined on behalf of the claimant under and pursuant to the commission hereto annexed, upon the annexed interrogatories and cross-interrogatories.

(Signed) S. CAMBRELENG,
A. H. DANA,
Commissioners.

New York, June 18, 1852.

William Mackey being duly sworn, deposes:—

To the first interrogatory he saith: My name is *William Mackey;* I am over forty years of age; I am a ship builder, and reside at 293 Henry street, in the city of New York.

To the second interrogatory he saith: I know the ship Hornet referred to in this interrogatory.

To the third interrogatory he saith: The ship Hornet was built by Westervelt and Mackey—my firm.

To the fourth interrogatory he saith: I am a member of the firm of Westervelt and Mackey.

To the fifth interrogatory he saith: I have been engaged as a ship builder since the year 1835, and have been with that firm since 1840.

To the sixth interrogatory he saith: The ship Hornet was as good a ship as any New York built ship; the materials used in building her, were as good as any New York built ship; she was a strong built ship.

To the seventh interrogatory he saith: I should consider she would rank as well as the best ship built in the city of New York; I think

we have built four clipper ships, viz: The Golden Gate, the N. B. Palmer, Eureka and the Hornet.

To the eighth interrogatory he saith: That the decks of the Hornet were supported by hanging and lodging, and bosom knees, and stanchioned in the centre—made of locust wood.

To the ninth interrogatory he saith: I examined the ship Hornet after she was fully rigged and completed, and after the boilers were on deck—but I can't say about the chimneys.

To the last interrogatory he saith: I know there was an extra tier of stanchions under the boilers; I know of nothing more.

The counsel for claimants here proposed, under the general interrogatory, to put down verbal questions to the witness, which was objected to by the counsel for plaintiff, and excluded by us.

Counsel for plaintiff then proposed to cross-examine the witness verbally, which was objected to, and decided by us to be inadmissible.

The cross-interrogatories not being addressed to this witness, we decide that they are not to be put to the witness.

(Signed) WILLIAM MACKEY.

Sworn and subscribed before us, this 11th day of May, A. D. 1852.

(Signed) S. CAMBRELENG,
A. H. DANA,
Commissioners.

George Mills, a witness sworn on the part of claimant, deposes:—

To the first interrogatory he saith: My name is *George Mills;* I am 52 years of age, and I reside at No. 242 Madison street, in the city of New York; I am by occupation a stevedore.

To the second interrogatory he saith: I have been engaged as stevedore about thirty-five years.

To the third interrogatory he saith: I know the ship Hornet.

To the fourth interrogatory he saith: I superintended the stowing of the cargo.

To the fifth interrogatory he saith: I did not take on board or receive the boilers or chimneys.

To the sixth interrogatory he saith: Yes sir; it was stowed with reference to the boilers and chimneys being carried on deck.

To the seventh interrogatory he saith: I did not examine the ship after the cargo and boilers were taken on board.

To the eighth interrogatory he saith: The heavy articles were stowed in the hold of the ship, and the lighter ones between decks; the cargo was well stowed and well secured; we had more than the usual quantity of firewood on board for stowage.

To the last interrogatory he saith: I went on board the ship when she first came down to pier 10; I looked at her and examined her between decks first; she appeared to be of good materials, and well put together; I went outside and looked at her, and did not think

she was a clipper; I thought her between a clipper and the ordinary class vessels; I thought I would rather go in her than in one of the sharp ships; I think, taking her altogether, she was one of the best ships I have ever seen in New York, and I have loaded the best ships; I know of nothing more.

Counsel for plaintiff then proposed to cross-examine the witness verbally; which was objected to, and decided by us to be inadmissible.

The cross interrogatories not being addressed to the witness, we decide that they are not to be put to the witness.

(Signed) GEORGE MILLS.

Sworn and subscribed before us, this 11th day of May, A. D. 1852.

(Signed) S. CAMBRELENG,
A. H. DANA,
Commissioners.

1852, June 3d.—Attended, Messrs. Cambreleng and Dana, Commissioners, present. M. Owen, of counsel for claimants.

Francis Cunningham, sworn on the part of the claimants, deposes and says:—

To the first interrogatory he saith: My name is Francis Cunningham. I am twenty-two years old and upwards. I am engaged in building steam-engine boilers and other machinery connected therewith. I reside in the city of New York.

To the second interrogatory, he saith: I have no interest whatever in the boilers, chimneys, and other articles referred to in this interrogatory; nor in the steamer Senator; nor in the event of this action.

To the third interrogatory he saith: The boilers and other articles inquired about, were ordered by my father, James Cunningham, and were for the steamer Senator, which was in part ordered by Mr. Cunningham and by Mr. Edward Minturn. We charged the boilers and other articles to the steamer Senator and owners. They were paid for by James Cunningham and Edward Minturn during the building and on the completion of the work.

To the fourth interrogatory he saith: The price agreed upon for the boilers and chimneys was eleven cents a pound. They have been paid for. The price agreed upon was paid, amounting to about the sum of seven thousand eight hundred dollars, which was the real value thereof. The boilers were sold by the pound.

To the fifth interrogatory, he saith: The whole weight of one boiler was 35,497 pounds, the chimney included, which weighed 6,902½ pounds. The furnace-doors, man-hole plates, grate-bar bearers, and other small parts of the boiler, were packed in boxes, and would probably weigh from 800 to 1,000 pounds, each boiler. That weight is included in the weight above stated. The other boiler

weighed 35,456 lbs. The chimney weighed the same as the other chimney, namely, 6,902½ lbs.; and the small fixtures to the boilers spoken of above, were put in a box, which I believe went below. The steam-pipe weighed 927 lbs.; the whole of it, of which I think 667 lbs. in one piece, went on deck; the balance, I believe, was put below. The eight pieces of sheet-iron work about 1,000 lbs.; three pieces of pipe are included in the drum above named; one band, included in smoke-pipe before mentioned. The grate-bars, I should think, would weigh about fifty pounds each. The sixteen grate-bar bearers, I should think, would weigh not far from thirty pounds apiece. I don't know. The eight boiler bearers would weigh from 100 to 125 pounds each, I should think. The six man-hole plates would weigh on the average about 40 pounds. The eight boiler doors would weigh about 75 pounds each. The four bolts would weigh about 25 or 30 pounds apiece. The two boxes, I think, contain the fixtures of the boilers, which were taken off as I have before stated. The weights of the boilers, steam-chimney, and steam-pipes, are correct, according to our books. The others are given from memory, but could be corrected on reference to our books.

To the sixth interrogatory, he saith: According to the best of my recollection they were finished from the 1st to the 16th of August.

To the seventh interrogatory he saith: I cannot answer with any accuracy the dimensions of the boilers, furnaces, and other articles mentioned in the Exhibits; or shape of each piece. The weight I have already given. I cannot state how thick the iron was of which the boiler was constructed; different parts of the boiler were of different thickness. I make the same answer as to the furnaces and chimneys. The boilers did contain certain flues. I can't state with accuracy the number; I think there were four—cylindrical form, from 16 to 18 inches in diameter. I have not the books of account here. I can produce them, but don't think they will show much light on the subject. The books not being here, I cannot answer the residue of this interrogatory.

To the last interrogatory he saith: The price of all the articles was from $8,800 to $9,000; I state this from recollection; the amount previously stated was for the boiler; the books did not contain the entries at the time the charges were made, but the items are contained in the bills rendered by us to the parties.

(Signed) FRANCIS CUNNINGHAM.

Sworn and subscribed this 3d day of June, A. D. 1852, before us.

(Signed) S. CAMBRELENG,
A. H. DANA,
Commissioners.

Effingham B. Sutton, witness sworn on the part of the claimant, deposes:—

To the first interrogatory he saith: My name is *Effingham B.*

Sutton; I am 35 years old; am a ship broker, and reside in New York city.

To the second interrogatory he saith: I had conversation with Edward Minturn respecting the weight of the boilers and appurtenances in this interrogatory inquired of, prior to the signing of the contract referred to; the conversation was in general terms respecting the weight and size of the boilers; this conversation was embodied in the contract referred to.

To the third interrogatory he saith: I don't recollect of any conversation respecting that contract, after the date of the contract referred to; we had conversation, but nothing of any interest to either party.

To the fourth interrogatory he saith: I saw the boilers and chimneys after they were placed on the deck of the vessel; I could not form any opinion as to the weight of said boilers and chimneys.

To the fifth interrogatory he saith: I did not, nor the masters or owners, to my knowledge.

To the sixth interrogatory he saith: I was not on board at the time the boilers were taken on board the vessel; I don't know that Edward Minturn or any person acting as the agent of libellant were on board the vessel at that time; as I was not there, I cannot answer the remainder of the interrogatory.

To the seventh interrogatory he saith: I do know the stevedore; his name is George Mills; his reputation as a stevedore is very good.

To the eighth interrogatory he saith: The cargo was well stowed; as well as any cargo to California.

To the ninth interrogatory he saith: I think that the articles referred to were nearly completed at the time the contract was made; Mr. Minturn gave the supposed weight.

To the last interrogatory he saith: I don't know of anything more.

To the first cross-interrogatory he saith: I have not answered the fourth direct interrogatory as supposed, and therefore cannot answer this cross-interrogatory.

(Signed) E. B. SUTTON.

Sworn and subscribed this 8th day of June, A. D. 1852, before us.

S. CAMBRELENG,
A. H. DANA,
Commissioners.

Joseph Belknap, a witness sworn on the part of claimant deposes:—

To the first interrogatory he saith: My name is *Joseph Belknap;* I am 35 years old and upwards; my occupation is that of an engineer; I reside in the city of New York.

To the second interrogatory he saith: I have no interest in the

boilers, chimneys, and other articles enquired of; nor in the steamer Senator; nor in this action.

To the third interrogatory he saith: They were ordered for the owners of the steamer "Senator;" the order was given by Mr. James Cunningham, one of the owners; they have been paid for; about the time the boilers were finished, they were paid for by James Cunningham, and Mr. Edward Minturn.

To the fourth interrogatory he saith: The price agreed upon for the boilers, chimneys, and articles referred to, was $8,616 25, which was the real value in the city of New York; the boilers were sold by us by the pound.

To the fifth interrogatory he saith: The weight of the boilers, chimneys, and other articles referred to in this interrogatory are correctly stated in the paper which I now produce, and which is hereto annexed and marked "A," and which contains an answer to this interrogatory.

To the sixth interrogatory he saith: They were all finished, or in process of manufacture, on the nineteenth day of July, 1851; they were not finished entirely, about the first of August, 1851.

To the seventh interrogatory he saith: I now produce a drawing of the boilers, as they were shipped on board the Hornet, with the chimneys detached; this drawing gives the dimensions and thickness of the iron; it also contains a drawing of the furnaces and chimneys; the thickness of the iron is denoted on the drawing by the numbers referring to wire gauge; the boilers contained return flues, four in each; their form and shape is shown by this drawing; the weight of each piece is shown by Exhibit A, before referred to; I produce this drawing as an answer to this interrogatory; it is marked "B;" I have not the books of account here, but I have a copy of the bill rendered to the steamer Senator and owners for the building of these boilers, chimneys, and appurtenances, which is contained in the paper already produced, and marked "A."

To the last interrogatory he saith: I don't know of anything further, unless it be that the paper marked "A" referred to, contains a statement of what was on the deck of the vessel, and what was below.

To the third cross interrogatory he saith: I know the weight from having seen them weighed; that is, I saw the boilers and chimneys weighed.

(Signed) JOSEPH BELKNAP.

Sworn and subscribed this 8th day of June, A. D. 1852, before us,

(Signed) S. CAMBRELENG,
(Signed) A. H. DANA,
Commissioners.

Charles T. Betts sworn for claimant, deposes:—

To the first interrogatory he saith: My name is *Charles T. Betts.* My age is forty. I am a boiler-maker, and reside on Long Island.

To the second interrogatory he saith: I have no interest in the boilers, chimneys, and other articles, or in the steamer Senator, or the event of this suit.

To the third interrogatory he saith: I do not know for whom the boilers, chimneys, and other articles, as the order came through the office. I cannot answer the rest of the interrogatory.

To the fourth interrogatory he saith: I cannot anwer.

To the fifth interrogatory he saith: I don't know.

To the sixth interrogatory he saith: The dimensions of the boilers, chimneys, &c., were given in the paper produced by Mr. Belknap, and marked B, and the weight in A.

(For Diagram, see original, page 105.)

To the seventh interrogatory he saith: The boilers, &c., were finished by the first of August—all of any importance; there were some small articles that were finished afterwards.

To the last interrogatory he saith: After the things were on board, I made a suggestion to the Captain, as to the mode of securing them. He said that they had a carpenter who understood his business, and would attend to them. I thought they were not properly secured. This was some two days before she went to sea.

(Signed) CHARLES T. BETTS.

Sworn and subscribed this 8th day of June, A. D. 1852, before us,

(Signed) S. CAMBRELENG,

(Signed) A. H. DANA,

Commissioners.

1852. June 11, attended.

Charles McDonald, a witness, sworn on the part of claimant, deposes:—

To the first interrogatory he saith: My name is *Charles McDonald.* My age is 29. I am Captain of the Floating Derrick Bisbye. I reside in this city.

To the second interrogatory he saith: I have been Master of the Floating Derrick for more than a year past.

To the third interrogatory he saith: I put on board the ship Hornet two boilers, two steam-pipes, and a steam-drum, some time last summer. I don't recollect of anything else.

To the fourth interrogatory he saith: The apparatus by which the boilers were put on board the Hornet, consisted of a crane, or patent-floating derrick, used for such purposes. I don't know its power, but it has lifted more than double the weight of these boilers.

To the fifth interrogatory he saith: I have no way of knowing the exact weight of each boiler. The opinion that we formed was, that the boilers weighed between fifteen and seventeen tons each. This opinion was formed from the size of the boilers, and the power used of the derrick.

To the last interrogatory he saith: I do not.

To the second cross-interrogatory he saith: I have not answered the fifth and sixth interrogatories as was presupposed, and have therefore no answer to make to this cross-interrogatory.

(Signed) C. McDONALD.

Sworn this 11th day of June, A. D. 1852, before us.

(Signed) S. CAMBRELENG,
A. H. DANA,
Commissioners.

Russell W. Glazier, sworn for claimant, deposed:—

To the first interrogatory he saith: My name is *Russell W. Glazier*. I am a shipwright and calker. I reside in this city. My age is forty-eight. I am foreman of Westervelt & Mackey.

To the second interrogatory he saith: I am in the employ of Westervelt & Mackey. I am foreman of the repairs, and calker of the yard. I have been in their employ about eleven years.

To the third interrogatory he saith: I have been engaged in the occupation of a ship-builder for upwards of twenty years past.

To the fourth interrogatory he saith: I know the ship Hornet referred to.

To the fifth interrogatory he saith; I had a part in building that vessel. I calked her. I calked her some time in the spring of 1851; some time in March, April, or May.

To the sixth interrogatory he saith: She was built of white-oak, live-oak, locust, cedar, and Georgia pine. That was the principal material. I considered her as good a ship as was turned out of New York at that day. There was a sufficient quantity of timber used—as much as ever used on ships of her size.

To the seventh interrogatory he saith: I should consider her A 1 in every respect.

To the eighth interrogatory he saith: I think she compares in rank equal to the best class of New York clipper ships in all the particulars inquired of in this interrogatory. I think she was abler than the common run of clipper ships to carry a full and heavy cargo.

To the ninth interrogatory he saith: The decks of the vessels are built in the usual manner; they were built with heavy beams of Georgia pine, secured with loding, bosom, and hanging knees; the

centre was supported by upright stanchions, with bolts to go through them.

To the last interrogatory he saith: I do not.

(Signed) RUSSELL M. GLAZIER.

Sworn and subscribed, this 11th day of June, A. D. 1852, before us,

(Signed) S. CAMBRELENG,
A. H. DANA,
Commissioners.

1852. June 18.

Michael Murphy, a witness sworn for claimant, deposed:—

To the first interrogatory he saith: My name is *Michael Murphy;* my age is 32. I am a pilot. I have been seven years branch pilot.

To the second interrogatory he saith: I do.

To the third interrogatory he saith: I did take said Hornet to sea on the 23d August, 1851.

To the fourth interrogatory he saith: She had boilers and appurtenances attached, consisting of two boilers and two steam-chimneys on deck.

To the fifth interrogatory he saith: She left about half-past ten in the morning.

To the sixth interrogatory he saith: She was towed down the bay as far as Sandy Hook.

To the seventh interrogatory he saith: I remained on board the Hornet about an hour after the steamer left her. In that time she sailed about six miles.

To the eighth interrogatory he saith: The wind was south; ship heading east south-east, close hauled on the wind; the wind was blowing from a six to a seven knot breeze; there was considerable of a southerly swell.

To the ninth interrogatory he saith: She behaved remarkably well, as much so as any vessel I have been on board.

To the tenth interrogatory he saith: She was in good sailing trim, drawing about twenty feet water; she compared well with other ships as to manageability. It was remarked by all on board how easily she steered in going down the bay; it only took a few spokes of the helm to steer her; she was not affected in the least by the swell of the sea.

To the eleventh interrogatory he saith: She was not affected in the least by her deck-load. Her cargo appeared to be well proportioned according to her size and capacity.

To the last interrogatory he saith: I considered her well loaded, and perfectly safe to proceed to sea. Nothing having occurred in going to sea to change that opinion.

I have followed the sea for twenty years, and consider myself fully competent to judge as to the seaworthiness of the Hornet at the time she sailed.

(Signed) MICHAEL MURPHY.

Sworn and subscribed this 11th day of June, A. D. 1852, before us,

(Signed) S. CAMBRELENG,
A. H. DANA,
Commissioners.

Copy of Bill rendered to Steamer Senator and Owners.

PHENIX FOUNDRY, *New York*, August 18, 1851.

Steamer Senator & Owners

To Cunningham, Belknap & Co. Dr.

To 2 boilers, 35,497, 35,456, 70,953 lbs. at 11 cts.		$7,804 83
Steam-drum and connections, 927 lbs. at 1s.		115 88
Smoke-pipe breeching, 969 lbs. at 10 cts.		96 90
2 man-hole plates, guards, bolts, etc. 180 lbs. at 8 cts.		14 40
1 large hand-hole plate, 49 lbs. at 10 cts.		4 90
6 Nos. do do 84 lbs. at 1s.		10 50
50 lbs. boiler rivets $1\frac{3}{4}$ in. 50 lbs. do $1\frac{1}{2}$ in. 25 lbs. do $\frac{7}{8}$ in.	125 lbs. at 7 cts.	8 75
28 lbs. button-head rivets (smoke-pipe), at 16 cts.		4 48
100 $2\frac{1}{2} \times \frac{9}{16}$ in. bolts 100 $1\frac{3}{4} \times \frac{9}{16}$ in. do 100 $1\frac{1}{2} \times \frac{9}{16}$ in. do 100 $\frac{5}{16}$ in. do	400 at 10 cts. each	40 00
400 washers at 2 cts.		8 00
8 gauge cocks at 24s.		24 00
4 furnace door linings, 180 lbs. at 4 cts.		7 20
4 bolts for boiler bearers, $68\frac{1}{2}$ at 10 cts.		6 85
8 boiler bearers, 736 at 4 cts.		29 44
204 grate bars, 13,688 lbs. at 3 cts.		410 64
8 grate-bar bearers, 566 lbs. at 3 cts.		16 98
Packing box		2 50
10 cartages at 8s.		10 00
		$8,616 25

"A." *Recapitulation of Weights.*

2 boilers	70,953 lbs.				
Steam-drum and connections	927				
Smoke-pipe breeching	969				
2 man-hole plates, &c. &c.	180				
1 hand-hole plate	49				
6 do do	84				
Boiler and smoke-pipe rivets	153				
4 furnace door linings	180				
4 bolts for boiler bearers	68½				
8 grate-bar bearers	566				
204 grate bars	13,688				
8 boiler bearers	736				
400 small bolts and washers *estimated*	150				
8 gauge cocks	20				
	88,723½ lbs.	Tons. 39	cwt. 12	qrs. 00	lbs. 19½
Of which on deck,					
2 boilers per sketch	57,148 lbs.				
2 steam chimneys for do. per sketch	13,805				
1 piece steampipe (weight of new piece)	667				
	71,620				

The furnace and flue doors, man-hole plates, &c. and hand-hole plates, grate-bar bearers, weighing from 900 to 1,000 lbs. each boiler, were taken off, and put below; therefore, deduct, say 1,900 lbs. 69,720 lbs.

On deck, 69,720 lbs. is 31 tons, 2 cwt. 2 qrs.

(Signed) S. CAMBRELENG,
A. H. DANA,
Commissioners.

Joseph Eyre being produced, sworn and examined on the part of the libellants, deposes as follows:—

I was engaged in examining the stowage of the Hornet; some of the cargo damaged by ordinary sea perils, and a good deal by bad stowage; gave certificate of it; I mean heavy goods were stowed on light goods; am daily engaged in examining light vessels; I think she was not as well stowed as usual.

Being cross-examined, the witness deposes:—

The goods damaged by bad stowage were liquors, 8 pipes; those

746.

injured by perils were by the main topsail sheet bits, the gipsey bits, the mainstay bits; can't tell how much was injured by bad stowage; kept a memorandum, have not got it with me.

Robert J. Waterman being also produced, sworn and examined as a witness on the part of the libellant, deposes as follows:—

I have been in command of clippers since 1846; have made one voyage a year, long voyages round the world; a clipper in heavy weather in a chop sea is very apt to labor; in a heavy gale of wind we heave the ship to under close-reefed maintopsails, and foresails; have commanded the Sea Witch and the Challenge; have many times run those ships under close-reefed maintopsails; they switch about a good deal, take in a good deal of water aboard; not enough to carry anything away; on first voyage of Sea Witch, had a good deal of bad weather; if you are carrying on hard under close-reefed maintopsails, always take in a good deal of water; if I had in a gale of wind a couple of boilers 24 feet long and 8 feet in diameter, of 16 or 17 tons apiece, and the safety of the ship I might get them over, but it would be a last resort; they would find their way overboard if there was room enough; it would be a long time before I would resort to that measure; but I think they would go off without injury to the vessel; if a vessel leave New York in August, the weather is generally fine; towards the middle of September very heavy gales; as heavy as off the Horn, not as frequent; a ship cannot carry in a heavy gale of wind, the sail the Hornet had on; I should not think 34 tons spread over a space of 26 feet by 20 would injure the deck.

Being cross-examined, the witness deposes as follows: I don't think the shape of the boiler would make any difference; I would cut away stanchions, &c., and make a hole for it to go out; the qualities of clippers have not undergone any great alteration since the Sea Witch was built.

Did not examine the rigging of the Hornet particularly; saw nothing different from usual.

Claimants recalled

William W. Lawrence, who testifies as follows: The second mate was off duty for two months for inefficiency, negligence, and drunkenness; there was 49 souls on board of the Hornet; the breadth of beam was 39 feet 10 inches; never had any conversation with him such as he testifies to; not in the habit of conversing with my officers.

George Weller being produced, sworn and examined as a witness on the part of the claimants, deposes as follows: I was discharging clerk of the Hornet; all the cargo mentioned in bill of lading was sent to Cunningham's store, except two boilers and two steam-chimneys; the freight list was $46,700, including freight on boilers; the value of cargo was about $250,000.